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SENATE BILL 497

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO PROBATE; UPDATING AND MAKING TECHNICAL REVISIONS TO
THE UNIFORM PROBATE CODE, THE UNIFORM TRUST CODE AND THE
UNIFORM PRINCIPAL AND INCOME ACT; ENACTING THE UNIFORM ADULT
GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT;
AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE
NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 45-1-102 NMSA 1978 (being Laws 1975,
Chapter 257, Section 1-102) is amended to read:

"45-1-102. RULE OF CONSTRUCTION--PURPOSES OF ACT.--

A. The Uniform Probate Code shall be liberally
construed and applied to promote its underlying purposes and
policies.

B. The underlying purposes and policies of the

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1 Uniform Probate Code are:

2 (1) to simplify, [~~and~~] clarify and modernize
3 certain laws concerning the affairs of decedents, missing
4 persons, protected persons, minors and incapacitated persons;

5 (2) to discover and make effective the intent
6 of a decedent in distribution of [~~his~~] the decedent's property;

7 (3) to promote a speedy and efficient system
8 for the settlement and distribution of the estate of the
9 decedent; [~~and~~]

10 (4) to facilitate survivorship and related
11 accounts and similar property interests in New Mexico;

12 (5) to provide a comprehensive system of
13 methods of disclaiming interests in property;

14 [~~(4)~~] (6) to facilitate the use and
15 enforcement of certain trusts and other governing instruments;

16 (7) to apportion taxes on estates; and

17 (8) to make uniform the law among the states."

18 Section 2. Section 45-1-104 NMSA 1978 (being Laws 1975,
19 Chapter 257, Section 1-104) is amended to read:

20 "45-1-104. SEVERABILITY.--~~[If any part or application of~~
21 ~~the Probate Code is held invalid, the remainder or its~~
22 ~~application to other situations or persons shall not be~~
23 ~~affected.] If any provision of the Uniform Probate Code or its
24 application to any person or circumstances is held invalid, the
25 invalidity does not affect other provisions or applications of~~

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1 that code that can be given effect without the invalid
2 provision or application, and to this end, the provisions of
3 the code are severable."

4 Section 3. Section 45-1-110 NMSA 1978 (being Laws 1995,
5 Chapter 210, Section 1) is amended to read:

6 "45-1-110. TIME OF TAKING EFFECT--PROVISIONS FOR
7 TRANSITION.--Except as provided elsewhere in [~~this~~] the Uniform
8 Probate Code, on the effective date of this code or of any
9 amendment to this code:

10 A. the code or the amendment applies to governing
11 instruments executed by decedents dying thereafter;

12 B. the code or the amendment applies to any
13 proceedings in court then pending or thereafter commenced
14 regardless of the time of the death of decedent except to the
15 extent that in the opinion of the court the former procedure
16 should be made applicable in a particular case in the interest
17 of justice or because of infeasibility of application of the
18 procedure of this code or the amendment;

19 C. every personal representative or other fiduciary
20 holding an appointment under this code on that date continues
21 to hold the appointment but has only the powers conferred by
22 this code or the amendment and is subject to the duties imposed
23 with respect to any act occurring or done thereafter;

24 D. an act done before the effective date in any
25 proceeding and any accrued right is not impaired by this code

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1 or the amendment. If a right is acquired, extinguished or
2 barred upon the expiration of a prescribed period of time
3 [~~which~~] that has commenced to run by the provisions of any
4 statute before the effective date, the provisions shall remain
5 in force with respect to that right; and

6 E. any rule of construction or presumption provided
7 in this code or the amendment applies to governing instruments
8 executed before the effective date unless there is a clear
9 indication of a contrary intent in the governing instrument."

10 Section 4. Section 45-1-201 NMSA 1978 (being Laws 1993,
11 Chapter 174, Section 4, as amended) is amended to read:

12 "45-1-201. DEFINITIONS.--

13 A. As used in the Uniform Probate Code, except as
14 provided in Subsection B of this section and unless the context
15 otherwise requires:

16 (1) "agent" includes an attorney-in-fact under
17 a durable or nondurable power of attorney, an individual
18 authorized to make decisions concerning another's health care
19 and an individual authorized to make decisions for another
20 under a natural death act;

21 (2) "application" means a written request to
22 [~~the probate~~] a court for an order of informal probate or
23 appointment pursuant to [~~Sections 45-3-301 through 45-3-311~~]
24 Chapter 45, Article 3 NMSA 1978;

25 (3) "beneficiary", as it relates to a trust

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1 beneficiary, includes a person who has any present or future
2 interest, vested or contingent, and also includes the owner of
3 an interest by assignment or other transfer; as it relates to a
4 charitable trust, includes any person entitled to enforce the
5 trust; as it relates to a "beneficiary of a beneficiary
6 designation", refers to a beneficiary of an insurance or
7 annuity policy, of an account with POD designation, of a
8 security registered in beneficiary form (TOD) or of a pension,
9 profit-sharing, retirement or similar benefit plan or other
10 nonprobate transfer at death; and, as it relates to a
11 "beneficiary designated in a governing instrument", includes a
12 grantee of a deed, a devisee, a trust beneficiary, a
13 beneficiary of a beneficiary designation, a donee, appointee or
14 taker in default of a power of appointment or a person in whose
15 favor a power of attorney or a power held in any individual,
16 fiduciary or representative capacity is exercised;

17 (4) "beneficiary designation" refers to a
18 governing instrument naming a beneficiary of an insurance or
19 annuity policy, of an account with POD designation, of a
20 security registered in beneficiary form (TOD) or of a pension,
21 profit-sharing, retirement or similar benefit plan or other
22 nonprobate transfer at death;

23 (5) "child" includes an individual entitled to
24 take as a child pursuant to the Uniform Probate Code by
25 intestate succession from the parent whose relationship is

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1 involved and excludes a person who is only a stepchild, a
2 foster child, a grandchild or any more remote descendant;

3 (6) "claims", in respect to estates of
4 decedents and protected persons, includes liabilities of the
5 decedent or protected person, whether arising in contract, in
6 tort or otherwise and liabilities of the estate that arise at
7 or after the death of the decedent or after the appointment of
8 a conservator, including funeral expenses and expenses of
9 administration. "Claims" does not include estate or
10 inheritance taxes or demands or disputes regarding title of a
11 decedent [~~an incapacitated person or a minor ward~~] or of a
12 protected person to specific assets alleged to be included in
13 the estate;

14 (7) "conservator" [~~means a person who is~~
15 ~~appointed by a court to manage the property or financial~~
16 ~~affairs or both of an incapacitated person or a minor ward~~] has
17 the same meaning as set forth in Section 45-5-101 NMSA 1978;

18 (8) "descendant" of an individual means all of
19 [~~his~~] the individual's descendants of all generations, with the
20 relationship of parent and child at each generation being
21 determined by the definition of child and parent contained in
22 the Uniform Probate Code;

23 (9) "devise", when used as a noun, means a
24 testamentary disposition of real or personal property and, when
25 used as a verb, means to dispose of real or personal property

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1 by will;

2 (10) "devisee" means a person designated in a
3 will to receive a devise. For the purposes of Chapter 45,
4 Article 3 NMSA 1978, in the case of a devise to an existing
5 trust or trustee or to a trustee ~~[on]~~ or trust described by
6 will, the trust or trustee is the devisee and the beneficiaries
7 are not devisees;

8 (11) "distributee" means ~~[any]~~ a person who
9 has received property of a decedent from ~~[his]~~ the decedent's
10 personal representative other than as a creditor or purchaser.
11 A testamentary trustee is a distributee only to the extent of
12 distributed assets or increment thereto remaining in ~~[his]~~ the
13 testamentary trustee's hands. A beneficiary of a testamentary
14 trust to whom the trustee has distributed property received
15 from a personal representative is a distributee of the personal
16 representative. For the purposes of this paragraph,
17 "testamentary trustee" includes a trustee to whom assets are
18 transferred by will, to the extent of the devised assets;

19 (12) "electronic" means relating to technology
20 having electronic, digital, magnetic, wireless, optical,
21 electromagnetic or similar capabilities;

22 (13) "emancipated minor" means a person
23 sixteen years of age or older who:

24 (a) has entered into a valid marriage,
25 whether or not the marriage was terminated by dissolution;

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1 (b) is on active duty with any of the
2 armed forces of the United States; or

3 (c) has received a declaration of
4 emancipation pursuant to the Emancipation of Minors Act;

5 ~~(12)~~ (14) "estate" includes the property of
6 the decedent, trust or other person whose affairs are subject
7 to the Uniform Probate Code as the property was originally
8 constituted and as it exists from time to time during
9 administration;

10 ~~(13)~~ (15) "exempt property" means that
11 property of a decedent's estate that is described in ~~[Section]~~
12 Sections 45-2-402 and 45-2-403 NMSA 1978;

13 ~~(14)~~ (16) "fiduciary" includes a personal
14 representative, guardian, guardian ad litem, conservator and
15 trustee;

16 ~~(15)~~ (17) "foreign personal representative"
17 means a personal representative appointed by another
18 jurisdiction;

19 ~~(16)~~ (18) "formal proceedings" means
20 proceedings conducted before a district judge with notice to
21 interested persons;

22 ~~(17)~~ (19) "governing instrument" means a
23 deed, will, trust, insurance or annuity policy, account with
24 POD designation, security registered in beneficiary form (TOD),
25 pension, profit-sharing, retirement or similar benefit plan,

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1 instrument creating or exercising a power of appointment or a
2 power of attorney or a dispositive, appointive or nominative
3 instrument of [~~any~~] a similar type;

4 [~~(18)~~] (20) "guardian" means a person who has
5 qualified to provide for the care, custody or control of the
6 person of a minor or incapacitated person pursuant to
7 [~~testamentary~~] parental or court appointment [~~but excludes one~~
8 ~~who is merely~~]. "Guardian" includes a limited, emergency and
9 temporary guardian but not a guardian ad litem;

10 [~~(19)~~] (21) "guardian ad litem" means a person
11 appointed by the [~~district~~] court to represent and protect the
12 interests of a minor or an incapacitated person in connection
13 with litigation or any other court proceeding;

14 [~~(20)~~] (22) "heirs", except as controlled by
15 Section 45-2-711 NMSA 1978, means persons, including the
16 surviving spouse and the state, who are entitled under the
17 statutes of intestate succession to the property of a decedent;

18 [~~(21)~~] (23) "incapacitated person" means an
19 individual described in Section 45-5-101 NMSA 1978;

20 [~~(22)~~] (24) "informal proceedings" means those
21 proceedings conducted without notice to interested persons
22 before the [~~probate~~] court for probate of a will or appointment
23 of a personal representative, except as provided for in Section
24 45-3-306 NMSA 1978;

25 [~~(23)~~] (25) "interested person" includes

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1 heirs, devisees, children, spouses, creditors, beneficiaries
2 and any others having a property right in or claim against a
3 trust estate or the estate of a decedent [~~a minor ward~~] or [~~an~~
4 ~~incapacitated~~] a protected person. "Interested person" also
5 includes persons having priority for appointment as personal
6 representative and other fiduciaries representing interested
7 persons. The meaning as it relates to particular persons may
8 vary from time to time and [~~must~~] shall be determined according
9 to the particular purposes of, and matter involved in, [~~any~~] a
10 proceeding [~~"Interested person" does not apply to the~~
11 ~~provisions of Chapter 45, Article 5 NMSA 1978~~];

12 [~~(24)~~] (26) "issue" of [~~a person~~] an
13 individual means [~~all of his~~] the individual's descendants [~~of~~
14 ~~all generations, with the relationship of parent and child at~~
15 ~~each generation being determined by the definition of child and~~
16 ~~parent contained in the Uniform Probate Code~~];

17 [~~(25)~~] (27) "lease" includes an oil, gas or
18 other mineral lease;

19 [~~(26)~~] (28) "letters" includes letters
20 testamentary, letters of guardianship, letters of
21 administration and letters of conservatorship;

22 [~~(27)~~] (29) "minor" means [~~a person~~] an
23 unemancipated individual who has not reached eighteen years of
24 age;

25 [~~(28)~~] (30) "mortgage" means any conveyance,

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1 agreement or arrangement in which property is encumbered or
2 used as security;

3 ~~[(29)]~~ (31) "nonresident decedent" means a
4 decedent who was domiciled in another jurisdiction at the time
5 of ~~[his]~~ death;

6 ~~[(30)]~~ (32) "organization" means a
7 corporation, business trust, limited liability company, estate,
8 trust, partnership, joint venture, association, government or
9 governmental subdivision or agency or any other legal or
10 commercial entity;

11 ~~[(31)]~~ (33) "parent" includes any person
12 entitled to take, or who would be entitled to take if the child
13 died without a will, as a parent pursuant to the Uniform
14 Probate Code by intestate succession from the child whose
15 relationship is in question and excludes any person who is only
16 a stepparent, foster parent or grandparent;

17 ~~[(32)]~~ (34) "payor" means a trustee, insurer,
18 business entity, employer, government, governmental agency or
19 subdivision or any other person authorized or obligated by law
20 or a governing instrument to make payments;

21 ~~[(33)]~~ (35) "person" means an individual or an
22 organization;

23 ~~[(34)]~~ (36) "personal representative" includes
24 executor, administrator, successor personal representative,
25 special administrator and persons who perform substantially the

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1 same function under the law governing their status. "General
2 personal representative" excludes special administrator;

3 [~~(35)~~] (37) "petition" means a written motion
4 or other request to [~~the probate~~] a court for an order after
5 notice;

6 [~~(36)~~] (38) "proceeding" includes action at
7 law and suit in equity;

8 [~~(37)~~] (39) "property" includes both real and
9 personal property or any right or interest therein and means
10 anything that may be the subject of ownership;

11 [~~(38)~~] (40) "protected person" [~~is as defined~~]
12 has the same meaning as set forth in Section 45-5-101 NMSA
13 1978;

14 [~~(39)~~] (41) "protective proceeding" means a
15 conservatorship proceeding [~~described in Section 45-5-101~~]
16 pursuant to Section 45-5-401 NMSA 1978;

17 (42) "record" means information that is
18 inscribed on a tangible medium or that is stored in an
19 electronic or other medium and is retrievable in perceivable
20 form;

21 [~~(40)~~] (43) "security" includes any note,
22 stock, treasury stock, bond, debenture, evidence of
23 indebtedness, certificate of interest or participation in an
24 oil, gas or mining title or lease or in payments out of
25 production under such a title or lease, collateral trust

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1 certificate, transferable share, voting trust certificate or,
2 in general, any interest or instrument commonly known as a
3 security or any certificate of interest or participation, any
4 temporary or interim certificate, receipt or certificate of
5 deposit for or any warrant or right to subscribe to or purchase
6 any of the foregoing;

7 ~~[(41)]~~ (44) "settlement", in reference to a
8 decedent's estate, includes the full process of administration,
9 distribution and closing;

10 (45) "sign" means with present intent to
11 authenticate or adopt a record other than a will:

12 (a) to execute or adopt a tangible
13 symbol; or

14 (b) to attach to or logically associate
15 with the record an electronic symbol, sound or process;

16 ~~[(42)]~~ (46) "special administrator" means a
17 personal representative as described by Sections 45-3-614
18 through 45-3-618 NMSA 1978;

19 ~~[(43)]~~ (47) "state" means a state of the
20 United States, the District of Columbia, the commonwealth of
21 Puerto Rico or any territory or insular possession subject to
22 the jurisdiction of the United States. "State" also includes
23 any Indian nation, tribe, pueblo or band located within the
24 United States and recognized by federal law or formally
25 acknowledged by a state of the United States;

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1 [~~(44)~~] (48) "successor personal
2 representative" means a personal representative, other than a
3 special administrator, who is appointed to succeed a previously
4 appointed personal representative;

5 [~~(45)~~] (49) "successors" means persons, other
6 than creditors, who are entitled to property of a decedent
7 under [~~his~~] the decedent's will or the Uniform Probate Code;

8 [~~(46)~~] (50) "supervised administration" refers
9 to the proceedings described in Article [~~III~~] 3, Part 5 of the
10 Uniform Probate Code;

11 [~~(47)~~] (51) "survive" means that an individual
12 has neither predeceased an event, including the death of
13 another individual, nor is deemed to have predeceased an event
14 pursuant to Section 45-2-104 or 45-2-702 NMSA 1978. "Survive"
15 includes its derivatives, such as "survives", "survived",
16 "survivor" and "surviving";

17 [~~(48)~~] (52) "testacy proceeding" means a
18 proceeding to establish a will or determine intestacy;

19 [~~(49)~~] (53) "testator" includes an individual
20 of either [~~sex~~] gender;

21 [~~(50)~~] (54) "trust" includes an express trust,
22 private or charitable, with additions thereto, wherever and
23 however created. "Trust" also includes a trust created or
24 determined by judgment or decree under which the trust is to be
25 administered in the manner of an express trust. "Trust"

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1 excludes other constructive trusts and excludes resulting
2 trusts, [~~conservatorship~~] conservatorships, personal
3 representatives, trust accounts as defined in Article [~~VI~~] 6 of
4 the Uniform Probate Code, custodial arrangements, including
5 those created under the Uniform Gifts to Minors Act or the
6 Uniform Transfer to Minors Act, business trusts providing for
7 certificates to be issued to beneficiaries, common trust funds,
8 voting trusts, security arrangements, liquidation trusts,
9 trusts for the primary purpose of paying debts, dividends,
10 interest, salaries, wages, profits, pensions or employee
11 benefits of any kind and any arrangement under which a person
12 is nominee or escrowee for another;

13 [~~(51)~~] (55) "trustee" includes an original,
14 additional or successor trustee, whether or not appointed or
15 confirmed by court;

16 [~~(52)~~] (56) "ward" means a person for whom a
17 guardian has been appointed; and

18 [~~(53)~~] (57) "will" includes a codicil and any
19 testamentary instrument that merely appoints a personal
20 representative, revokes or revises another will, nominates a
21 guardian or expressly excludes or limits the right of an
22 individual or class to succeed to property of the decedent
23 passing by intestate succession. "Will" does not include a
24 holographic will.

25 B. The definitions in Subsection A of this section

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1 are made subject to additional definitions contained in
2 subsequent articles that are applicable to specific articles,
3 parts or sections."

4 Section 5. Section 45-1-301 NMSA 1978 (being Laws 1975,
5 Chapter 257, Section 1-301) is amended to read:

6 "45-1-301. APPLICATION.--Except as otherwise provided in
7 the Uniform Probate Code, the code applies to:

8 A. the affairs and estates of decedents, missing
9 persons and protected persons domiciled in New Mexico;

10 B. the property of nonresidents located in New
11 Mexico or property coming into the control of a fiduciary who
12 is subject to the laws of New Mexico;

13 C. incapacitated persons, [~~and~~] minors and
14 protected persons in New Mexico;

15 D. survivorship and related accounts and similar
16 property interests in New Mexico; [~~and~~

17 ~~E. trusts subject to administration in New Mexico;]~~

18 E. the disclaimer of property interests by persons
19 in New Mexico;

20 F. certain kinds of trusts and other governing
21 instruments that are governed by the laws of New Mexico; and

22 G. the apportionment of taxes on estates subject to
23 tax by New Mexico."

24 Section 6. Section 45-1-302 NMSA 1978 (being Laws 1975,
25 Chapter 257, Section 1-302, as amended) is amended to read:

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1 "45-1-302. SUBJECT MATTER JURISDICTION OF DISTRICT AND
2 PROBATE COURTS.--

3 A. The district court has exclusive original
4 jurisdiction over all subject matter relating to:

5 (1) formal proceedings with respect to the
6 estates of decedents, including determinations of testacy,
7 appointment of personal representatives, constructions of
8 wills, administration and expenditure of funds of estates,
9 determination of heirs and successors of decedents and
10 distribution and closing of estates;

11 (2) estates of missing and protected persons;

12 (3) protection of incapacitated persons and
13 minors; [~~and~~]

14 (4) survivorship and related accounts and
15 similar property interests;

16 (5) disclaimer of interests in property;

17 (6) apportionment of taxes on estates; and

18 [~~(4)~~] (7) trusts and other governing
19 instruments except wills.

20 B. The district court in formal proceedings shall
21 have jurisdiction to determine title to and value of real or
22 personal property as between the estate and any interested
23 person, including strangers to the estate claiming adversely
24 thereto. The district court has full power to make orders,
25 judgments and decrees and to take all other action necessary

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1 and proper to administer justice in matters [~~which~~] that come
2 before it.

3 C. The probate court and the district court have
4 original jurisdiction over informal proceedings for probate of
5 a will or appointment of a personal representative."

6 Section 7. Section 45-1-303 NMSA 1978 (being Laws 1975,
7 Chapter 257, Section 1-303) is amended to read:

8 "45-1-303. VENUE--MULTIPLE PROCEEDINGS--TRANSFER.--

9 A. Subject to the provisions of [~~Section 3-201~~
10 ~~where~~] Sections 45-1-302 and 45-3-201 NMSA 1978, if a
11 proceeding under the Uniform Probate Code could be maintained
12 in more than one place in New Mexico, the court in which the
13 proceeding is first commenced has the exclusive right to
14 proceed.

15 B. If proceedings concerning the same estate,
16 protected person [~~ward~~] or trust are commenced in more than one
17 court of New Mexico, the court in which the proceeding was
18 first commenced shall continue to hear the matter, and the
19 other courts shall hold the matter in abeyance until the
20 question of venue is decided [~~and~~]. If the ruling court
21 determines that venue is properly in another court, it shall
22 transfer the proceeding to the other court.

23 C. If a court finds that in the interest of justice
24 a proceeding or a file should be located in another court of
25 New Mexico, the court making the finding may transfer the

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1 proceeding or file to the other court."

2 Section 8. Section 45-1-403 NMSA 1978 (being Laws 1975,
3 Chapter 257, Section 1-403) is amended to read:

4 "45-1-403. PLEADINGS--WHEN PARTIES BOUND BY OTHERS--
5 NOTICE.--In judicial proceedings involving trusts, or estates
6 of decedents, minors, protected persons or incapacitated
7 persons, and in judicially supervised settlements, the
8 following rules apply:

9 A. interests to be affected shall be described in
10 pleadings [~~which~~] that give reasonable information to owners by
11 name or class, by reference to the instrument creating the
12 interests or in [~~other~~] another appropriate manner;

13 B. [~~persons are~~] a person is bound by [~~orders~~] an
14 order binding [~~others~~] another in the following cases:

15 (1) [~~orders~~] an order binding the sole holder
16 or all co-holders of a power of revocation or a presently
17 exercisable general power of appointment, including one in the
18 form of a power of amendment, bind other persons to the extent
19 their interests as objects, takers in default or otherwise are
20 subject to the power;

21 (2) to the extent there is no conflict of
22 interest between them or among persons represented:

23 (a) [~~orders~~] an order binding a
24 conservator [~~bind~~] binds the person whose estate [~~he~~] the
25 conservator controls;

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1 (b) [~~orders~~] an order binding a guardian
2 [~~bind~~] binds the ward if no conservator of [~~his~~] the ward's
3 estate has been appointed;

4 (c) [~~orders~~] an order binding a trustee
5 [~~bind~~] binds beneficiaries of the trust in proceedings to
6 probate a will establishing or adding to a trust, to review the
7 acts or accounts of a [~~prior~~] former fiduciary and in
8 proceedings involving creditors or other third parties; [~~and~~]

9 (d) [~~orders~~] an order binding a personal
10 representative [~~bind~~] binds persons interested in the
11 undistributed assets of a decedent's estate in actions or
12 proceedings by or against the estate [~~If there is no conflict~~
13 ~~of interest and no conservator or guardian has been appointed,~~
14 ~~a parent may represent his minor child~~]; and

15 (e) an order binding the sole holder or
16 all co-holders of a general testamentary power of appointment
17 binds other persons to the extent their interests as objects,
18 takers in default or otherwise are subject to the power; and

19 (3) [~~an~~] unless otherwise represented, a minor
20 or an incapacitated, unborn or unascertained person [~~who is not~~
21 ~~otherwise represented~~] is bound by an order to the extent [~~his~~]
22 the minor's or the incapacitated, unborn or unascertained
23 person's interest is adequately represented by another party
24 having a substantially identical interest in the proceeding;

25 C. if no conservator or guardian has been

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1 appointed, a parent may represent a minor child;

2 [~~G.~~] D. notice is required as follows:

3 (1) the notice [~~as~~] prescribed by Section
4 [~~1-401 of the Probate Code~~] 45-1-401 NMSA 1978 shall be given
5 to [~~any~~] every person having an interest in the subject of the
6 hearing or to one who can bind [~~such~~] an interested person as
7 described in Paragraph (1) or (2) of Subsection B of this
8 section. Notice may be given both to [~~a~~] an interested person
9 and to another who may bind [~~him~~] that person; and

10 (2) notice is given to unborn or unascertained
11 persons who are not represented under Paragraph (1) or (2) of
12 Subsection B of this section by giving notice to all known
13 persons whose interests in the proceedings are substantially
14 identical to those of the unborn or unascertained persons; and

15 [~~D.~~] E. at any point in a proceeding, the
16 [~~district~~] court shall appoint a guardian ad litem to represent
17 the interest of a minor; an incapacitated, unborn or
18 unascertained person; or a person whose identity or address is
19 unknown, if the [~~district~~] court determines that representation
20 of the interest would otherwise be inadequate. If not
21 precluded by conflict of interests, a guardian ad litem may be
22 appointed to represent several persons or interests. The
23 [~~district~~] court shall [~~set out~~] state its reasons for
24 appointing a guardian ad litem as a part of the record of the
25 proceeding."

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1 Section 9. Section 45-2-501 NMSA 1978 (being Laws 1993,
2 Chapter 174, Section 25) is amended to read:

3 "45-2-501. WHO MAY MAKE WILL.--An individual eighteen or
4 more years of age who is of sound mind or an emancipated minor
5 who is of sound mind may make a will."

6 Section 10. Section 45-2-507 NMSA 1978 (being Laws 1993,
7 Chapter 174, Section 30) is amended to read:

8 "45-2-507. REVOCATION BY WRITING OR BY ACT.--

9 A. A will or any part thereof is revoked:

10 (1) by executing a subsequent will that
11 revokes the previous will or part expressly or by
12 inconsistency; [~~or~~]

13 (2) by executing another subsequent document
14 in the manner provided for in Section 45-2-502 or 45-2-504 NMSA
15 1978, or both, that expressly revokes the previous will or part
16 thereof; or

17 [~~(2)~~] (3) by performing a revocatory act on
18 the will if the testator performed the act with the intent and
19 for the purpose of revoking the will or part or if another
20 individual performed the act in the testator's conscious
21 presence and by the testator's direction. For purposes of this
22 paragraph, "revocatory act on the will" includes burning,
23 tearing, canceling, obliterating or destroying the will or any
24 part of it. A burning, tearing or canceling is a "revocatory
25 act on the will", whether or not the burn, tear or cancellation

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1 touched any of the words on the will.

2 B. If a subsequent will does not expressly revoke a
3 previous will, the execution of the subsequent will wholly
4 revokes the previous will by inconsistency if the testator
5 intended the subsequent will to replace rather than supplement
6 the previous will.

7 C. The testator is presumed to have intended a
8 subsequent will to replace rather than supplement a previous
9 will if the subsequent will makes a complete disposition of the
10 testator's estate. If this presumption arises and is not
11 rebutted by clear and convincing evidence, the previous will is
12 revoked; only the subsequent will is operative on the
13 testator's death.

14 D. The testator is presumed to have intended a
15 subsequent will to supplement rather than replace a previous
16 will if the subsequent will does not make a complete
17 disposition of the testator's estate. If this presumption
18 arises and is not rebutted by clear and convincing evidence,
19 the subsequent will revokes the previous will only to the
20 extent that the subsequent will is inconsistent with the
21 previous will; each will is fully operative on the testator's
22 death to the extent [~~they~~] that the wills are not
23 inconsistent."

24 Section 11. Section 45-2-603 NMSA 1978 (being Laws 1993,
25 Chapter 174, Section 42, as amended) is amended to read:

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1 "45-2-603. ANTILAPSE--DECEASED DEVISEE--CLASS GIFTS.--

2 A. As used in this section:

3 (1) "alternative devise" means a devise that
4 is expressly created by the will and, under the terms of the
5 will, can take effect instead of another devise on the
6 happening of one or more events, including survival of the
7 testator or failure to survive the testator, whether an event
8 is expressed in condition-precedent, condition-subsequent or
9 any other form. A residuary clause constitutes an alternative
10 devise with respect to a nonresiduary devise only if the will
11 specifically provides that, upon lapse or failure, the
12 nonresiduary devise, or nonresiduary devises in general, pass
13 under the residuary clause;

14 (2) "class member" includes an individual who
15 fails to survive the testator but who would have taken under a
16 devise in the form of a class gift had ~~he~~ the class member
17 survived the testator;

18 (3) "descendant of a grandparent", as used in
19 Subsection B of this section, means an individual who qualifies
20 as a descendant of a grandparent of the testator or of the
21 donor of a power of appointment pursuant to:

22 (a) rules of construction applicable to
23 a class gift created in the testator's will if the devise or
24 exercise of the power is in the form of a class gift; or

25 (b) rules for intestate succession if

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1 the devise or exercise of the power is not in the form of a
2 class gift;

3 (4) "descendants", as used in the phrase
4 "surviving descendants" of a deceased devisee or class member
5 in Paragraphs (1) and (2) of Subsection B of this section,
6 means the descendants of a deceased devisee or class member who
7 would take under a class gift created in the testator's will;

8 [~~(3)~~] (5) "devise" includes an alternative
9 devise, a devise in the form of a class gift and an exercise of
10 a power of appointment;

11 [~~(4)~~] (6) "devisee" includes:

12 (a) a class member if the devise is in
13 the form of a class gift;

14 (b) an individual or class member who
15 was deceased at the time the testator executed [~~his~~] the
16 testator's will as well as an individual or class member who
17 was then living but who failed to survive the testator; and

18 (c) an appointee under a power of
19 appointment exercised by the testator's will;

20 [~~(5)~~] (7) "stepchild" means a child of the
21 surviving, deceased or former spouse of the testator or of the
22 donor of a power of appointment and not of the testator or
23 donor;

24 [~~(6)~~] ~~"surviving devisee" or "surviving~~
25 ~~descendant"]~~

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[bracketed material] = delete

1 (8) "surviving", as used in the phrase
2 "surviving devisees" or "surviving descendants", means [~~a~~
3 ~~devisee~~] devisees or [~~a descendant~~] descendants who neither
4 predeceased the testator nor [~~is~~] are deemed to have
5 predeceased the testator pursuant to the provisions of Section
6 45-2-702 NMSA 1978; and

7 [~~(7)~~] (9) "testator" includes the donee of a
8 power of appointment if the power is exercised in the
9 testator's will.

10 B. If a devisee fails to survive the testator and
11 is a grandparent, a descendant of a grandparent or a stepchild
12 of either the testator or the donor of a power of appointment
13 exercised by the testator's will, the following apply:

14 (1) except as provided in Paragraph (4) of
15 this subsection, if the devise is not in the form of a class
16 gift and the deceased devisee leaves surviving descendants, a
17 substitute gift is created in the devisee's surviving
18 descendants. They take by representation the property to which
19 the devisee would have been entitled had the devisee survived
20 the testator;

21 (2) except as provided in Paragraph (4) of
22 this subsection, if the devise is in the form of a class gift,
23 other than a devise to "issue", "descendants", "heirs of the
24 body", "heirs", "next of kin", "relatives" or "family" or a
25 class described by language of similar import, a substitute

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1 gift is created in the surviving descendants of any deceased
2 devisee. The property to which the devisees would have been
3 entitled had all of them survived the testator passes to the
4 surviving devisees and the surviving descendants of the
5 deceased devisees. Each surviving devisee takes the share to
6 which ~~[he]~~ the surviving devisee would have been entitled had
7 the deceased devisees survived the testator. Each deceased
8 devisee's surviving descendants who are substituted for the
9 deceased devisee take by representation the share to which the
10 deceased devisee would have been entitled had the deceased
11 devisee survived the testator. For the purposes of this
12 paragraph, "deceased devisee" means a class member who failed
13 to survive the testator and left one or more surviving
14 descendants;

15 (3) for the purposes of Section 45-2-601 NMSA
16 1978, words of survivorship, such as in a devise to an
17 individual "if ~~[he]~~ the individual survives me" or in a devise
18 to "my surviving children" are not, in the absence of
19 additional evidence, a sufficient indication of an intent
20 contrary to the application of this section;

21 (4) if the will creates an alternative devise
22 with respect to a devise for which a substitute gift is created
23 by Paragraph (1) or (2) of this subsection, the substitute gift
24 is superseded by the alternative devise ~~[only]~~ if ~~[an expressly~~
25 ~~designated devisee of the alternative devise is entitled to~~

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1 ~~take under the will]~~:

2 (a) the alternative devise is in the
3 form of a class gift and one or more members of the class is
4 entitled to take under the will; or

5 (b) the alternative devise is not in the
6 form of a class gift and the expressly designated devisee of
7 the alternative devise is entitled to take under the will; and

8 (5) unless the language creating a power of
9 appointment expressly excludes the substitution of the
10 descendants of an appointee for the appointee, a surviving
11 descendant of a deceased appointee of a power of appointment
12 can be substituted for the appointee pursuant to the provisions
13 of this section whether or not the descendant is an object of
14 the power.

15 C. If, pursuant to the provisions of Subsection B
16 of this section, substitute gifts are created and not
17 superseded with respect to more than one devise and the devises
18 are alternative devises, one to the other, the determination of
19 which of the substitute gifts takes effect is resolved as
20 follows:

21 (1) except as provided in Paragraph (2) of
22 this subsection, the devised property passes under the primary
23 substitute gift; ~~and~~

24 (2) if there is a younger-generation devise,
25 the devised property passes under the younger-generation

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1 substitute gift and not under the primary substitute gift; and
2 ~~[D.]~~ (3) as used in ~~[Subsections C and D of]~~
3 this ~~[section]~~ subsection:

4 ~~[(1)]~~ (a) "primary devise" means the
5 devise that would have taken effect had all the deceased
6 devisees of the alternative devises who left surviving
7 descendants survived the testator;

8 ~~[(2)]~~ (b) "primary substitute gift"
9 means the substitute gift created with respect to the primary
10 devise;

11 ~~[(3)]~~ (c) "younger-generation devise"
12 means a devise that: ~~[(a)]~~ 1) is to a descendant of a devisee
13 of the primary devise; ~~[(b)]~~ 2) is an alternative devise with
14 respect to the primary devise; ~~[(c)]~~ 3) is a devise for which a
15 substitute gift is created; and ~~[(d)]~~ 4) would have taken
16 effect had all the deceased devisees who left surviving
17 descendants survived the testator except the deceased devisee
18 or devisees of the primary devise; and

19 ~~[(4)]~~ (d) "younger-generation substitute
20 gift" means the substitute gift created with respect to the
21 younger-generation devise."

22 Section 12. Section 45-2-606 NMSA 1978 (being Laws 1993,
23 Chapter 174, Section 45) is amended to read:

24 "45-2-606. NONADEMPTION OF SPECIFIC DEVICES--UNPAID
25 PROCEEDS OF SALE, CONDEMNATION OR INSURANCE--SALE BY

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1 CONSERVATOR OR AGENT.--

2 A. A specific devisee has a right to ~~[the]~~
3 specifically devised property in the testator's estate at the
4 testator's death and:

5 (1) any balance of the purchase price,
6 together with any security agreement, ~~[owing from]~~ owed by a
7 purchaser ~~[to]~~ at the ~~[testator at]~~ testator's death by reason
8 of sale of the property;

9 (2) any amount of a condemnation award for the
10 taking of the property unpaid at death;

11 (3) any proceeds unpaid at death on fire or
12 casualty insurance on or other recovery for injury to the
13 property;

14 (4) any property owned by the testator at
15 death and acquired as a result of foreclosure or obtained in
16 lieu of foreclosure of the security interest for specifically
17 devised obligation; ~~[and]~~

18 (5) any real property or tangible personal
19 property owned by the testator at death that the testator
20 acquired as a replacement for specifically devised real
21 property or tangible personal property; and

22 (6) if not covered by Paragraphs (1) through
23 (5) of this subsection, a pecuniary devise equal to the value
24 as of its date of disposition of other specifically devised
25 property disposed of during the testator's lifetime but only to

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1 the extent it is established that ademption would be
2 inconsistent with the testator's manifested plan of
3 distribution or that at the time the will was made, the date of
4 disposition or otherwise, the testator did not intend ademption
5 of the devise.

6 B. If specifically devised property is sold or
7 mortgaged by a conservator or by an agent acting within the
8 authority of a durable power of attorney for an incapacitated
9 [~~principal~~] person or if a condemnation award, insurance
10 proceeds or recovery for injury to the property [~~are~~] is paid
11 to a conservator or to an agent acting within the authority of
12 a durable power of attorney for an incapacitated [~~principal~~]
13 person, the specific devisee has the right to a general
14 pecuniary devise equal to the net sale price, the amount of the
15 unpaid loan, the condemnation award, the insurance proceeds or
16 the recovery.

17 C. The right of a specific devisee pursuant to
18 Subsection B of this section is reduced by any right the
19 devisee has pursuant to Subsection A of this section.

20 D. For the purposes of the references in Subsection
21 B of this section to a conservator, Subsection B of this
22 section does not apply if, after the sale, mortgage,
23 condemnation, casualty or recovery, it was adjudicated that the
24 testator's incapacity ceased and the testator survived the
25 adjudication [~~by~~] for at least one year.

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1 E. For the purposes of the references in Subsection
2 B of this section to an agent acting within the authority of a
3 durable power of attorney for an incapacitated [~~principal~~]
4 person:

5 [~~(1)~~ "~~incapacitated principal~~" means a
6 ~~principal who is an incapacitated person;~~

7 ~~(2)~~ (1) no adjudication of incapacity before
8 death is necessary; and

9 [~~(3)~~] (2) the acts of an agent within the
10 authority of a durable power of attorney are presumed to be for
11 [~~an~~] the incapacitated [~~principal~~] person."

12 Section 13. Section 45-2-706 NMSA 1978 (being Laws 1993,
13 Chapter 174, Section 54, as amended) is amended to read:

14 "45-2-706. LIFE INSURANCE--RETIREMENT PLAN--ACCOUNT WITH
15 POD DESIGNATION--TRANSFER-ON-DEATH REGISTRATION--DECEASED
16 BENEFICIARY.--

17 A. As used in this section:

18 (1) "alternative beneficiary designation"
19 means a beneficiary designation that is expressly created by
20 the governing instrument and, under the terms of the governing
21 instrument, can take effect instead of another beneficiary
22 designation on the happening of one or more events, including a
23 person's survival of the decedent or failure to survive the
24 decedent, whether an event is expressed in condition-precedent,
25 condition-subsequent or any other form;

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1 (2) "beneficiary" means the beneficiary of a
2 beneficiary designation under which the beneficiary must
3 survive the decedent and includes:

4 (a) a class member if the beneficiary
5 designation is in the form of a class gift; and

6 (b) an individual or class member who
7 was deceased at the time the beneficiary designation was
8 executed as well as an individual or class member who was then
9 living but who failed to survive the decedent, but excludes a
10 joint tenant of a joint tenancy with the right of survivorship
11 and a party to a joint and survivorship account;

12 (3) "beneficiary designation" includes an
13 alternative beneficiary designation and a beneficiary
14 designation in the form of a class gift;

15 (4) "class member" includes an individual who
16 fails to survive the decedent but who would have taken under a
17 beneficiary designation in the form of a class gift had ~~[he]~~
18 the individual survived the decedent;

19 (5) "descendant of a grandparent", as used in
20 Subsection B of this section, means an individual who qualifies
21 as a descendant of a grandparent of the decedent pursuant to:

22 (a) rules of construction applicable to
23 a class gift created in the decedent's beneficiary designation
24 if the beneficiary designation is in the form of a class gift;
25 or

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1 (b) rules for intestate succession if
2 the beneficiary designation is not in the form of a class gift;

3 (6) "descendants", as used in the phrase
4 "surviving descendants" of a deceased beneficiary or class
5 member in Paragraphs (1) and (2) of Subsection B of this
6 section, means the descendants of a deceased beneficiary or
7 class member who would take under a class gift created in the
8 beneficiary designation;

9 [~~5~~] (7) "stepchild" means a child of the
10 decendent's surviving, deceased or former spouse and not of the
11 decendent; and

12 [~~6~~] ~~"surviving beneficiary" or "surviving~~
13 ~~descendant"]~~

14 (8) "surviving", as used in the phrase
15 "surviving beneficiaries" or "surviving descendants", means [a
16 beneficiary] beneficiaries or [a descendant] descendants who
17 neither predeceased the decedent nor [is] are deemed to have
18 predeceased the decedent pursuant to the provisions of Section
19 45-2-702 NMSA 1978.

20 B. If a beneficiary fails to survive the decedent
21 and is a grandparent, a descendant of a grandparent or a
22 stepchild of the decedent, the following apply:

23 (1) except as provided in Paragraph (4) of
24 this subsection, if the beneficiary designation is not in the
25 form of a class gift and the deceased beneficiary leaves

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1 surviving descendants, a substitute gift is created in the
2 beneficiary's surviving descendants. They take by
3 representation the property to which the beneficiary would have
4 been entitled had the beneficiary survived the decedent;

5 (2) except as provided in Paragraph (4) of
6 this subsection, if the beneficiary designation is in the form
7 of a class gift, other than a beneficiary designation to
8 "issue", "descendants", "heirs of the body", "heirs", "next of
9 kin", "relatives" or "family" or a class described by language
10 of similar import, a substitute gift is created in the
11 surviving descendants of any deceased beneficiary. The
12 property to which the beneficiaries would have been entitled
13 had all of them survived the decedent passes to the surviving
14 beneficiaries and the surviving descendants of the deceased
15 beneficiaries. Each surviving beneficiary takes the share to
16 which [~~he~~] the surviving beneficiary would have been entitled
17 had the deceased beneficiaries survived the decedent. Each
18 deceased beneficiary's surviving descendants who are
19 substituted for the deceased beneficiary take by representation
20 the share to which the deceased beneficiary would have been
21 entitled had the deceased beneficiary survived the decedent.
22 For the purposes of this paragraph, "deceased beneficiary"
23 means a class member who failed to survive the decedent and
24 left one or more surviving descendants;

25 (3) for the purposes of Section 45-2-701 NMSA

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1 1978, words of survivorship, such as in a beneficiary
2 designation to an individual "if [~~he~~] the individual survives
3 me" or in a beneficiary designation to "my surviving children",
4 are not, in the absence of additional evidence, a sufficient
5 indication of an intent contrary to the application of this
6 section; and

7 (4) if a governing instrument creates an
8 alternative beneficiary designation with respect to a
9 beneficiary designation for which a substitute gift is created
10 by Paragraph (1) or (2) of this subsection, the substitute gift
11 is superseded by the alternative beneficiary designation [~~only~~]
12 if [~~an expressly designated beneficiary of the alternative~~
13 ~~beneficiary designation is entitled to take~~]:

14 (a) the alternative beneficiary
15 designation is in the form of a class gift and one or more
16 members of the class is entitled to take; or

17 (b) the alternative beneficiary
18 designation is not in the form of a class gift and the
19 expressly designated beneficiary of the alternative beneficiary
20 designation is entitled to take.

21 C. If, pursuant to the provisions of Subsection B
22 of this section, substitute gifts are created and not
23 superseded with respect to more than one beneficiary
24 designation and the beneficiary designations are alternative
25 beneficiary designations, one to the other, the determination

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1 of which of the substitute gifts takes effect is resolved as
2 follows:

3 (1) except as provided in Paragraph (2) of
4 this subsection, the property passes under the primary
5 substitute gift; ~~and~~

6 (2) if there is a younger-generation
7 beneficiary designation, the property passes under the
8 younger-generation substitute gift and not under the primary
9 substitute gift; and

10 ~~[D.]~~ (3) as used in ~~[Subsections C and D of]~~
11 this ~~[section]~~ subsection:

12 ~~[(1)]~~ (a) "primary beneficiary
13 designation" means the beneficiary designation that would have
14 taken effect had all the deceased beneficiaries of the
15 alternative beneficiary designations who left surviving
16 descendants survived the decedent;

17 ~~[(2)]~~ (b) "primary substitute gift"
18 means the substitute gift created with respect to the primary
19 beneficiary designation;

20 ~~[(3)]~~ (c) "younger-generation
21 beneficiary designation" means as a beneficiary designation
22 that: ~~[(a)]~~ 1) is to a descendant of a beneficiary of the
23 primary beneficiary designation; ~~[(b)]~~ 2) is an alternative
24 beneficiary designation with respect to the primary beneficiary
25 designation; ~~[(e)]~~ 3) is a beneficiary designation for which a

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1 substitute gift is created; and [~~(d)~~] 4) would have taken
2 effect had all the deceased beneficiaries who left surviving
3 descendants survived the decedent except the deceased
4 beneficiary or beneficiaries of the primary beneficiary
5 designation; and

6 [~~(4)~~] (d) "younger-generation substitute
7 gift" means the substitute gift created with respect to the
8 younger- generation beneficiary designation.

9 [~~E-~~] D. A payor is protected from liability in
10 making payments under the terms of the beneficiary designation
11 until the payor has received written notice of a claim to a
12 substitute gift under this section. Payment made before the
13 receipt of written notice of a claim to a substitute gift under
14 this section discharges the payor, but not the recipient, from
15 all claims for the amounts paid. A payor is liable for a
16 payment made after the payor has received written notice of the
17 claim. A recipient is liable for a payment received whether or
18 not written notice of the claim is given.

19 The written notice of the claim [~~must~~] shall be mailed to
20 the payor's main office or home by registered or certified
21 mail, return receipt requested, or served upon the payor in the
22 same manner as a summons in a civil action. Upon receipt of
23 written notice of the claim, a payor may pay any amount owed by
24 it to the court having jurisdiction of the probate proceedings
25 relating to the decedent's estate or, if no proceedings have

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1 been commenced, to the court having jurisdiction of probate
2 proceedings relating to decedents' estates located in the
3 county of the decedent's residence. The court shall hold the
4 funds and, upon its determination under this section, shall
5 order disbursement in accordance with the determination.

6 Payment made to the court discharges the payor from all claims
7 for the amounts paid.

8 ~~[F.]~~ E. A person who purchases property for value
9 and without notice or who receives a payment or other item of
10 property in partial or full satisfaction of a legally
11 enforceable obligation is neither obligated pursuant to the
12 provisions of this section to return the payment, item of
13 property or benefit nor ~~[is]~~ liable pursuant to the provisions
14 of this section for the amount of the payment or the value of
15 the item of property or benefit. But a person who, not for
16 value, receives a payment, item of property or any other
17 benefit to which the person is not entitled pursuant to the
18 provisions of this section is obligated to return the payment,
19 item of property or benefit or is personally liable for the
20 amount of the payment or the value of the item of property or
21 benefit to the person who is entitled to it pursuant to the
22 provisions of this section.

23 ~~[G.]~~ F. If this section or any part of this section
24 is preempted by federal law with respect to a payment, an item
25 of property or any other benefit covered by this section, a

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1 person who, not for value, receives the payment, item of
2 property or any other benefit to which the person is not
3 entitled pursuant to the provisions of this section is
4 obligated to return the payment, item of property or benefit or
5 is personally liable for the amount of the payment or the value
6 of the item of property or benefit to the person who would have
7 been entitled to it were this section or part of this section
8 not preempted."

9 Section 14. Section 45-2-707 NMSA 1978 (being Laws 1993,
10 Chapter 174, Section 55, as amended) is amended to read:

11 "45-2-707. SURVIVORSHIP WITH RESPECT TO FUTURE INTERESTS
12 UNDER TERMS OF TRUST--SUBSTITUTE TAKERS.--

13 A. As used in this section:

14 (1) "alternative future interest" means an
15 expressly created future interest that can take effect in
16 possession or enjoyment instead of another future interest on
17 the happening of one or more events, including survival of an
18 event or failure to survive an event, whether an event is
19 expressed in condition-precedent, condition-subsequent or any
20 other form. A residuary clause in a will does not create an
21 alternative future interest with respect to a future interest
22 created in a nonresiduary devise in the will, whether or not
23 the will specifically provides that lapsed or failed devises
24 are to pass under the residuary clause;

25 (2) "beneficiary" means the beneficiary of a

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1 future interest and includes a class member if the future
2 interest is in the form of a class gift;

3 (3) "class member" includes an individual who
4 fails to survive the distribution date but who would have taken
5 under a future interest in the form of a class gift had ~~he~~
6 the individual survived the distribution date;

7 (4) "descendants", as used in the phrase
8 "surviving descendants" of a deceased beneficiary or class
9 member in Paragraphs (1) and (2) of Subsection B of this
10 section, means the descendants of a deceased beneficiary or
11 class member who would take under a class gift created in the
12 trust;

13 ~~(4)~~ (5) "distribution date", with respect to
14 a future interest, means the time when the future interest is
15 to take effect in possession or enjoyment. The distribution
16 date need not occur at the beginning or end of a calendar day,
17 but can occur at a time during the course of a day;

18 ~~(5)~~ (6) "future interest" includes an
19 alternative future interest and a future interest in the form
20 of a class gift;

21 ~~(6)~~ (7) "future interest under the terms of
22 a trust" means a future interest that was created by a transfer
23 creating a trust or to an existing trust or by an exercise of a
24 power of appointment to an existing trust, directing the
25 continuance of an existing trust, designating a beneficiary of

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1 an existing trust or creating a trust; and

2 [~~(7) "surviving beneficiary" or "surviving~~
3 ~~descendant"~~]

4 (8) "surviving", as used in the phrase
5 "surviving beneficiaries" or "surviving descendants", means [~~a~~
6 ~~beneficiary~~] beneficiaries or [~~a descendant~~] descendants who
7 neither predeceased the distribution date nor [~~is~~] are deemed
8 to have predeceased the distribution date pursuant to the
9 provisions of Section 45-2-702 NMSA 1978.

10 B. A future interest under the terms of a trust is
11 contingent on the beneficiary's surviving the distribution
12 date. If a beneficiary of a future interest under the terms of
13 a trust fails to survive the distribution date, the following
14 apply:

15 (1) except as provided in Paragraph (4) of
16 this subsection, if the future interest is not in the form of a
17 class gift and the deceased beneficiary leaves surviving
18 descendants, a substitute gift is created in the beneficiary's
19 surviving descendants. They take by representation the
20 property to which the beneficiary would have been entitled had
21 the beneficiary survived the distribution date;

22 (2) except as provided in Paragraph (4) of
23 this subsection, if the future interest is in the form of a
24 class gift, other than a future interest to "issue",
25 "descendants", "heirs of the body", "heirs", "next of kin",

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1 "relatives" or "family" or a class described by language of
2 similar import, a substitute gift is created in the surviving
3 descendants of any deceased beneficiary. The property to which
4 the beneficiaries would have been entitled had all of them
5 survived the distribution date passes to the surviving
6 beneficiaries and the surviving descendants of the deceased
7 beneficiaries. Each surviving beneficiary takes the share to
8 which ~~he~~ the surviving beneficiary would have been entitled
9 had the deceased beneficiaries survived the distribution date.
10 Each deceased beneficiary's surviving descendants who are
11 substituted for the ~~ceased~~ deceased beneficiary take by
12 representation the share to which the deceased beneficiary
13 would have been entitled had the deceased beneficiary survived
14 the distribution date. For the purposes of this paragraph,
15 "deceased beneficiary" means a class member who failed to
16 survive the distribution date and left one or more surviving
17 descendants;

18 (3) for the purposes of Section 45-2-701 NMSA
19 1978, words of survivorship attached to a future interest are
20 not, in the absence of additional evidence, a sufficient
21 indication of an intent contrary to the application of this
22 section. Words of survivorship include words of survivorship
23 that relate to the distribution date or to an earlier or an
24 unspecified time, whether those words of survivorship are
25 expressed in condition-precedent, condition-subsequent or any

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1 other form; and

2 (4) if a governing instrument creates an
3 alternative future interest with respect to a future interest
4 for which a substitute gift is created by Paragraph (1) or (2)
5 of this subsection, the substitute gift is superseded by the
6 alternative future interest ~~[only]~~ if ~~[an expressly designated~~
7 ~~beneficiary of the alternative future interest is entitled to~~
8 ~~take in possession or enjoyment]~~:

9 (a) the alternative future interest is
10 in the form of a class gift and one or more members of the
11 class is entitled to take in possession or enjoyment; or

12 (b) the alternative future interest is
13 not in the form of a class gift and the expressly designated
14 beneficiary of the alternative future interest is entitled to
15 take in possession or enjoyment.

16 C. If, pursuant to the provisions of Subsection B
17 of this section, substitute gifts are created and not
18 superseded with respect to more than one future interest and
19 the future interests are alternative future interests, one to
20 the other, the determination of which of the substitute gifts
21 takes effect is resolved as follows:

22 (1) except as provided in Paragraph (2) of
23 this subsection, the property passes under the primary
24 substitute gift; ~~and]~~

25 (2) if there is a younger-generation future

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1 interest, the property passes under the younger-generation
2 substitute gift and not under the primary substitute gift; and

3 (3) as used in this subsection:

4 [~~(1)~~] (a) "primary future interest"
5 means the future interest that would have taken effect had all
6 the deceased beneficiaries of the alternative future interests
7 who left surviving descendants survived the distribution date;

8 [~~(2)~~] (b) "primary substitute gift"
9 means the substitute gift created with respect to the primary
10 future interest;

11 [~~(3)~~] (c) "younger-generation future
12 interest" means a future interest that: [~~(a)~~] 1) is to a
13 descendant of a beneficiary of the primary future interest;
14 [~~(b)~~] 2) is an alternative future interest with respect to the
15 primary future interest; [~~(c)~~] 3) is a future interest for
16 which a substitute gift is created; and [~~(d)~~] 4) would have
17 taken effect had all the deceased beneficiaries who left
18 surviving descendants survived the distribution date except the
19 deceased beneficiary or beneficiaries of the primary future
20 interest; and

21 [~~(4)~~] (d) "younger-generation substitute
22 gift" means the substitute gift created with respect to the
23 younger-generation future interest.

24 D. Except as provided in Subsection E of this
25 section, if after the application of Subsections B and C of

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1 this section there is no surviving taker, the property passes
2 in the following order:

3 (1) if the trust was created in a nonresiduary
4 devise in the transferor's will or in codicil to the
5 transferor's will, the property passes under the residuary
6 clause in the transferor's will; for purposes of this section,
7 the residuary clause is treated as creating a future interest
8 under the terms of a trust; and

9 (2) if no taker is produced by the application
10 of Paragraph (1) of this subsection, the property passes to the
11 transferor's heirs pursuant to the provisions of Section
12 45-2-711 NMSA 1978.

13 E. If, after the application of Subsections B and C
14 of this section, there is no surviving taker and if the future
15 interest was created by the exercise of a power of appointment:

16 (1) the property passes under the donor's
17 gift-in-default clause, if any, which clause is treated as
18 creating a future interest under the terms of a trust; and

19 (2) if no taker is produced by the application
20 of Paragraph (1) of this subsection, the property passes as
21 provided in Subsection [E] D of this section. For purposes of
22 Subsection [E] D of this section, "transferor" means the donor
23 if the power was a nongeneral power and means the donee if the
24 power was a general power."

25 Section 15. Section 45-2-709 NMSA 1978 (being Laws 1993,

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1 Chapter 174, Section 57, as amended) is amended to read:

2 "45-2-709. REPRESENTATION--PER CAPITA AT EACH
3 GENERATION--PER STIRPES.--

4 A. As used in this section:

5 (1) "deceased child" or "deceased descendant"
6 means a child or a descendant who either predeceased the
7 distribution date or is deemed to have predeceased the
8 distribution date pursuant to the provisions of Section
9 45-2-702 NMSA 1978;

10 (2) "distribution date", with respect to an
11 interest, means the time when the interest is to take effect in
12 possession or enjoyment. The distribution date need not occur
13 at the beginning or end of a calendar day, but can occur at a
14 time during the course of a day; and

15 (3) "surviving ancestor", "surviving child" or
16 "surviving descendant" means an ancestor, a child or a
17 descendant who neither predeceased the distribution date nor is
18 deemed to have predeceased the distribution date pursuant to
19 the provisions of Section 45-2-702 NMSA 1978.

20 B. If an applicable statute or a governing
21 instrument calls for property to be distributed "by
22 representation" or "per capita at each generation", the
23 property is divided into as many equal shares as there are:

24 (1) surviving descendants in the generation
25 nearest to the designated ancestor that contains one or more

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1 surviving descendants; and

2 (2) deceased descendants in the same
3 generation who left surviving descendants, if any.

4 Each surviving descendant in the nearest generation is
5 allocated one share. The remaining shares, if any, are
6 combined and then divided in the same manner among the
7 surviving descendants of the deceased descendants as if the
8 surviving descendants who were allocated a share and their
9 surviving descendants had predeceased the distribution date.

10 C. If a governing instrument calls for property to
11 be distributed "per stirpes", the property is divided into as
12 many equal shares as there are:

13 (1) surviving children of the designated
14 ancestor; and

15 (2) deceased children who left surviving
16 descendants.

17 Each surviving child, if any, is allocated one share. The
18 share of each deceased child [~~if any~~] with surviving
19 descendants is divided in the same manner, with subdivision
20 repeating at each succeeding generation until the property is
21 fully allocated among surviving descendants.

22 D. For the purposes of Subsections B and C of this
23 section, an individual who is deceased and left no surviving
24 descendant is disregarded and an individual who leaves a
25 surviving ancestor who is a descendant of the designated

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1 ancestor is not entitled to a share."

2 Section 16. Section 45-2-803 NMSA 1978 (being Laws 1993,
3 Chapter 174, Section 62, as amended) is amended to read:

4 "45-2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION,
5 WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY
6 DESIGNATIONS.--

7 A. As used in this section:

8 (1) "disposition or appointment of property"
9 includes a transfer of an item of property or any other benefit
10 to a beneficiary designated in a governing instrument; and

11 (2) "revocable", with respect to a
12 disposition, appointment, provision or nomination, means one
13 under which the decedent, at the time of or immediately before
14 death, was alone empowered, by law or under the governing
15 instrument, to cancel the designation, in favor of the killer,
16 whether or not the decedent was then empowered to designate
17 [~~himself~~] the decedent's own self in place of [~~his~~] the
18 decedent's killer and the decedent then had capacity to
19 exercise the power.

20 B. An individual who feloniously and intentionally
21 kills the decedent forfeits all benefits pursuant to the
22 provisions of Chapter 45, Article 2 NMSA 1978 with respect to
23 the decedent's estate, including an intestate share, an omitted
24 spouse's or child's share, a family allowance and a personal
25 property allowance. If the decedent died intestate, the

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1 decedent's intestate estate passes as if the killer disclaimed
2 [~~his~~] the killer's intestate share.

3 C. The felonious and intentional killing of the
4 decedent:

5 (1) revokes any revocable:

6 (a) disposition or appointment of
7 property made by the decedent to the killer in a governing
8 instrument;

9 (b) provision in a governing instrument
10 executed by the decedent conferring a general or nongeneral
11 power of appointment on the killer; and

12 (c) nomination of the killer in a
13 governing instrument executed by the decedent, nominating or
14 appointing the killer to serve in any fiduciary or
15 representative capacity, including a personal representative,
16 executor, trustee or agent; and

17 (2) severs the interests of the decedent and
18 killer in property held by them at the time of the killing as
19 joint tenants with the right of survivorship, transforming the
20 interests of the decedent and killer into equal tenancies in
21 common.

22 D. A severance pursuant to the provisions of
23 Paragraph (2) of Subsection C of this section does not affect
24 any third-party interest in property acquired for value and in
25 good-faith reliance on an apparent title by survivorship in the

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1 killer unless a writing declaring the severance has been noted,
2 registered, filed or recorded in records appropriate to the
3 kind and location of the property that are relied upon in the
4 ordinary course of transactions involving such property as
5 evidence of ownership.

6 E. Provisions of a governing instrument executed by
7 the decedent are given effect as if the killer disclaimed all
8 provisions revoked by this section or, in the case of a revoked
9 nomination in a fiduciary or representative capacity, as if the
10 killer predeceased the decedent.

11 F. An acquisition of property or interest by a
12 killer not covered by this section [~~must~~] shall be treated in
13 accordance with the principle that a killer cannot profit from
14 [~~his~~] the killer's wrong.

15 G. After all right to appeal has been exhausted, a
16 judgment of conviction establishing criminal accountability for
17 the felonious and intentional killing of the decedent
18 conclusively establishes the convicted individual as the
19 decedent's killer for purposes of this section. In the absence
20 of a conviction, the court upon the petition of an interested
21 person [~~must~~] shall determine whether under the preponderance
22 of evidence standard the individual would be found criminally
23 accountable for the felonious and intentional killing of the
24 decedent. If the court determines that under that standard the
25 individual would be found criminally accountable for the

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1 felonious and intentional killing of the decedent, the
2 determination conclusively establishes that individual as the
3 decedent's killer for purposes of this section.

4 H. A payor or other third party is not liable for
5 having made a payment or transferred an item of property or any
6 other benefit to a beneficiary designated in a governing
7 instrument executed by the decedent affected by an intentional
8 and felonious killing or for having taken any other action in
9 good-faith reliance on the validity of the governing instrument
10 executed by the decedent upon request and satisfactory proof of
11 the decedent's death before the payor or other third party
12 received written notice of a claimed forfeiture or revocation
13 under this section. A payor or other third party is liable for
14 a payment made or other action taken after the payor or other
15 third party received written notice of a claimed forfeiture or
16 revocation under this section.

17 Written notice of a claimed forfeiture or revocation
18 pursuant to the provisions of this section [~~must~~] shall be
19 mailed to the payor's or other third party's main office or
20 home by registered or certified mail, return receipt requested,
21 or served upon the payor or other third party in the same
22 manner as a summons in a civil action. Upon receipt of written
23 notice of a claimed forfeiture or revocation pursuant to the
24 provisions of this section, a payor or other third party may
25 pay any amount owed or transfer or deposit any item of property

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1 held by it to or with the court having jurisdiction of the
2 probate proceedings relating to the decedent's estate or, if no
3 proceedings have been commenced, to or with the court having
4 jurisdiction of probate proceedings relating to decedents'
5 estates located in the county of the decedent's residence. The
6 court shall hold the funds or item of property and, upon its
7 determination pursuant to the provisions of this section, shall
8 order disbursement in accordance with the determination.
9 Payments, transfers or deposits made to or with the court
10 discharge the payor or other third party from all claims for
11 the value of amounts paid to or items of property transferred
12 to or deposited with the court.

13 I. A person who purchases property for value and
14 without notice or who receives a payment or other item of
15 property in partial or full satisfaction of a legally
16 enforceable obligation is neither obligated pursuant to the
17 provisions of this section to return the payment, item of
18 property or benefit nor ~~[is]~~ liable pursuant to the provisions
19 of this section for the amount of the payment or the value of
20 the item of property or benefit. But a person who, not for
21 value, receives a payment, item of property or any other
22 benefit to which the person is not entitled pursuant to the
23 provisions of this section is obligated to return the payment,
24 item of property or benefit or is personally liable for the
25 amount of the payment or the value of the item of property or

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1 benefit to the person who is entitled to it pursuant to the
2 provisions of this section.

3 J. If this section or any part of this section is
4 preempted by federal law with respect to a payment, an item of
5 property or any other benefit covered by this section, a person
6 who, not for value, receives the payment, item of property or
7 any other benefit to which the person is not entitled pursuant
8 to the provisions of this section is obligated to return the
9 payment, item of property or benefit or is personally liable
10 for the amount of the payment or the value of the item of
11 property or benefit to the person who would have been entitled
12 to it were this section or part of this section not preempted."

13 Section 17. Section 45-2-804 NMSA 1978 (being Laws 1993,
14 Chapter 174, Section 63, as amended) is amended to read:

15 "45-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS
16 BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.--

17 A. As used in this section:

18 (1) "disposition or appointment of property"
19 includes a transfer of an item of property or any other benefit
20 to a beneficiary designated in a governing instrument;

21 (2) "divorce or annulment" means [~~any~~] a
22 divorce or annulment or [~~any~~] a dissolution or declaration of
23 invalidity of a marriage that would exclude the spouse as a
24 surviving spouse within the meaning of Section 45-2-802 NMSA
25 1978. A decree of separation that does not terminate the

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1 status of husband and wife is not a divorce for purposes of
2 this section;

3 (3) "divorced individual" includes an
4 individual whose marriage has been annulled;

5 (4) "governing instrument" means a governing
6 instrument executed by the divorced individual before the
7 divorce or annulment of [~~his~~] the divorced individual's
8 marriage to [~~his~~] the former spouse;

9 (5) "relative of the divorced individual's
10 former spouse" means an individual who is related to the
11 divorced individual's former spouse by blood, adoption or
12 affinity and who, after the divorce or annulment, is not
13 related to the divorced individual by blood, adoption or
14 affinity; and

15 (6) "revocable", with respect to a
16 disposition, appointment, provision or nomination, means one
17 under which the divorced individual, at the time of the divorce
18 or annulment, was alone empowered by law or under the governing
19 instrument to cancel the designation in favor of [~~his~~] the
20 former spouse or former spouse's relative whether or not the
21 divorced individual was then empowered to designate [~~himself~~]
22 the divorced individual's own self in place of [~~his~~] the former
23 spouse or in place of [~~his~~] the former spouse's relative and
24 whether or not the divorced individual then had the capacity to
25 exercise the power.

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1 B. Except as provided by the express terms of a
2 governing instrument, a court order or a contract relating to
3 the division of the marital estate made between the divorced
4 individuals before or after the marriage, divorce or annulment,
5 the divorce or annulment of a marriage:

6 (1) revokes any revocable:

7 (a) disposition or appointment of
8 property made by a divorced individual to [~~his~~] the former
9 spouse in a governing instrument and any disposition or
10 appointment created by law or in a governing instrument to a
11 relative of the divorced individual's former spouse;

12 (b) provision in a governing instrument
13 conferring a general or nongeneral power of appointment on the
14 divorced individual's former spouse or on a relative of the
15 divorced individual's former spouse; and

16 (c) nomination in a governing
17 instrument, nominating a divorced individual's former spouse or
18 a relative of the divorced individual's former spouse to serve
19 in any fiduciary or representative capacity, including a
20 personal representative, executor, trustee, conservator, agent
21 or guardian; and

22 (2) severs the interests of the former spouses
23 in property held by them at the time of the divorce or
24 annulment as joint tenants with the right of survivorship,
25 transforming the interests of the former spouses into equal

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1 tenancies in common.

2 C. A severance pursuant to the provisions of
3 Paragraph (2) of Subsection B of this section does not affect
4 any third-party interest in property acquired for value and in
5 good faith reliance on an apparent title by survivorship in the
6 survivor of the former spouses unless a writing declaring the
7 severance has been noted, registered, filed or recorded in
8 records appropriate to the kind and location of the property
9 that are relied upon in the ordinary course of transactions
10 involving such property as evidence of ownership.

11 D. Provisions of a governing instrument are given
12 effect as if the former spouse and relatives of the former
13 spouse disclaimed all provisions revoked by this section or, in
14 the case of a revoked nomination in a fiduciary or
15 representative capacity, as if the former spouse and relatives
16 of the former spouse died immediately before the divorce or
17 annulment.

18 E. Provisions revoked solely by this section are
19 revived by the divorced individual's remarriage to the former
20 spouse or by a nullification of the divorce or annulment.

21 F. No change of circumstances other than as
22 described in this section and in Section 45-2-803 NMSA 1978
23 effects a revocation.

24 G. A payor or other third-party is not liable for
25 having made a payment or transferred an item of property or any

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1 other benefit to a beneficiary designated in a governing
2 instrument affected by a divorce, annulment or remarriage or
3 for having taken any other action in good faith reliance on the
4 validity of the governing instrument before the payor or other
5 third-party received written notice of the divorce, annulment
6 or remarriage. A payor or other third-party is liable for a
7 payment made or other action taken after the payor or other
8 third-party received written notice of a claimed forfeiture or
9 revocation pursuant to the provisions of this section.

10 Written notice of the divorce, annulment or remarriage
11 pursuant to the provisions of this section [~~must~~] shall be
12 mailed to the payor's or other third-party's main office or
13 home by registered or certified mail, return receipt requested,
14 or served upon the payor or other third-party in the same
15 manner as a summons in a civil action. Upon receipt of the
16 written notice of the divorce, annulment or remarriage, a payor
17 or other third-party may pay any amount owed or transfer or
18 deposit any item of property held by it to or with the court
19 having jurisdiction of the probate proceedings relating to the
20 decedent's estate or, if no proceedings have been commenced, to
21 or with the court having jurisdiction of probate proceedings
22 relating to decedents' estates located in the county of the
23 decedent's residence. The court shall hold the funds or item
24 of property and, upon its determination pursuant to the
25 provisions of this section, shall order disbursement or

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1 transfer in accordance with the determination. Payments,
2 transfers or deposits made to or with the court discharge the
3 payor or other third-party from all claims for the value of
4 amounts paid to or items of property transferred to or
5 deposited with the court.

6 H. A person who purchases property from a former
7 spouse, relative of a former spouse or any other person for
8 value and without notice or who receives from a former spouse,
9 relative of a former spouse or any other person a payment or
10 other item of property in partial or full satisfaction of a
11 legally enforceable obligation is neither obligated pursuant
12 to the provisions of this section to return the payment, item
13 of property or benefit nor is liable pursuant to the
14 provisions of this section for the amount of the payment or
15 the value of the item of property or benefit. But a former
16 spouse, relative of a former spouse or other person who, not
17 for value, received a payment, item of property or any other
18 benefit to which that person is not entitled pursuant to the
19 provisions of this section is obligated to return the payment,
20 item of property or benefit or is personally liable for the
21 amount of the payment or the value of the item of property or
22 benefit to the person who is entitled to it pursuant to the
23 provisions of this section.

24 I. If this section or any part of this section is
25 preempted by federal law with respect to a payment, an item of

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1 property or any other benefit covered by this section, a
2 former spouse, relative of the former spouse or any other
3 person who, not for value, received a payment, item of
4 property or any other benefit to which that person is not
5 entitled pursuant to the provisions of this section is
6 obligated to return that payment, item of property or benefit
7 or is personally liable for the amount of the payment or the
8 value of the item of property or benefit to the person who
9 would have been entitled to it were this section or part of
10 this section not preempted."

11 Section 18. A new section of the Uniform Probate Code,
12 Section 45-2-805 NMSA 1978, is enacted to read:

13 "45-2-805. [NEW MATERIAL] REFORMATION TO CORRECT
14 MISTAKES.--The court may reform the terms of a governing
15 instrument, even if unambiguous, to conform the terms to the
16 transferor's intention if it is proved by clear and convincing
17 evidence that the transferor's intent and the terms of the
18 governing instrument were affected by a mistake of fact or
19 law, whether in expression or inducement."

20 Section 19. A new section of the Uniform Probate Code,
21 Section 45-2-806 NMSA 1978, is enacted to read:

22 "45-2-806. [NEW MATERIAL] MODIFICATION TO ACHIEVE
23 TRANSFEROR'S TAX OBJECTIVES.--To achieve the transferor's tax
24 objectives, the court may modify the terms of a governing
25 instrument in a manner that is not contrary to the

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1 transferor's probable intention. The court may provide that
2 the modification has retroactive effect."

3 Section 20. Section 45-3-108 NMSA 1978 (being Laws
4 1975, Chapter 257, Section 3-108, as amended) is amended to
5 read:

6 "45-3-108. PROBATE, TESTACY AND APPOINTMENT
7 PROCEEDINGS--ULTIMATE TIME LIMIT.--

8 A. No informal probate or appointment proceeding
9 or formal testacy or appointment proceeding, other than a
10 proceeding to probate a will previously probated at the
11 testator's domicile or appointment proceedings relating to an
12 estate in which there has been a prior appointment, may be
13 commenced more than three years after the decedent's death,
14 except:

15 (1) if a previous proceeding was dismissed
16 because of doubt about the fact of the decedent's death, then
17 appropriate probate, appointment or testacy proceedings may be
18 maintained at any time thereafter upon a finding that the
19 decedent's death occurred [~~prior to~~] before the initiation of
20 the previous proceeding and the applicant or petitioner has
21 not delayed unduly in initiating the subsequent proceeding;

22 (2) appropriate probate, appointment or
23 testacy proceedings may be maintained in relation to the
24 estate of an absent, disappeared or missing person for whose
25 estate a conservator has been appointed at any time within

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1 three years after the conservator becomes able to establish
2 the death of the protected person;

3 (3) a proceeding to contest an informally
4 probated will and to secure appointment of the person with
5 legal priority for appointment in the event the contest is
6 successful may be commenced within the later of twelve months
7 from the informal probate or three years from the decedent's
8 death;

9 (4) an informal appointment or a formal
10 testacy or appointment proceeding may be commenced thereafter
11 if no proceedings concerning the succession or estate
12 administration has occurred within the three-year period after
13 the decedent's death, but the personal representative has no
14 right to possess estate assets as provided in Section 45-3-709
15 NMSA 1978 beyond that necessary to confirm title thereto in
16 the successors to the estate and claims other than expenses of
17 administration may not be presented against the estate; and

18 (5) a formal testacy proceeding may be
19 commenced at any time after three years from the decedent's
20 death for the purpose of establishing an instrument to direct
21 or control the ownership of property passing or distributable
22 after the decedent's death from one other than the decedent
23 when the property is to be appointed by the terms of the
24 decedent's will or is to pass or be distributed as a part of
25 the decedent's estate or its transfer is otherwise to be

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1 controlled by the terms of the decedent's will.

2 B. The limitations set out in Subsection A of this
3 section do not apply to proceedings to construe probated wills
4 or determine heirs of an intestate.

5 C. In cases pursuant to the provisions of
6 Paragraph (1) or (2) of Subsection A of this section, the date
7 on which a testacy or appointment proceeding is properly
8 commenced shall be deemed to be the date of the decedent's
9 death for purposes of other limitation provisions of the
10 Uniform Probate Code that relate to the date of death."

11 Section 21. Section 46-3A-101 NMSA 1978 (being Laws
12 2001, Chapter 113, Section 101) is amended to read:

13 "46-3A-101. SHORT TITLE.--~~[This act]~~ Chapter 46,
14 Article 3A NMSA 1978 may be cited as the "Uniform Principal
15 and Income Act"."

16 Section 22. Section 46-3A-409 NMSA 1978 (being Laws
17 2001, Chapter 113, Section 409) is amended to read:

18 "46-3A-409. DEFERRED COMPENSATION, ANNUITIES AND
19 SIMILAR PAYMENTS.--

20 (a) As used in this section:

21 (1) "payment" means a payment that a trustee
22 may receive over a fixed number of years or during the life of
23 one or more individuals because of services rendered or
24 property transferred to the payer in exchange for future
25 payments. The term includes a payment made in money or

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1 property from the payer's general assets or from a separate
2 fund created by the payer. [~~including~~] For purposes of
3 Subsections (d), (e), (f) and (g) of this section, "payment"
4 also includes any payment from any separate fund, regardless of
5 the reason for the payment; and

6 (2) "separate fund" includes a private or
7 commercial annuity, an individual retirement account and a
8 pension, profit-sharing, stock-bonus or stock-ownership plan.

9 (b) To the extent that a payment is characterized
10 as interest or a dividend or a payment made in lieu of interest
11 or a dividend, a trustee shall allocate [~~it~~] the payment to
12 income. The trustee shall allocate to principal the balance of
13 the payment and any other payment received in the same
14 accounting period that is not characterized as interest, a
15 dividend or an equivalent payment.

16 (c) If no part of a payment is characterized as
17 interest, a dividend or an equivalent payment, and all or part
18 of the payment is required to be made, a trustee shall allocate
19 to income ten percent of the part that is required to be made
20 during the accounting period and the balance to principal. If
21 no part of a payment is required to be made or the payment
22 received is the entire amount to which the trustee is entitled,
23 the trustee shall allocate the entire payment to principal.
24 For purposes of this subsection, a payment is not "required to
25 be made" to the extent that it is made because the trustee

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1 exercises a right of withdrawal.

2 (d) ~~[If, to obtain an estate tax marital deduction~~
3 ~~for a trust, a trustee must allocate more of a payment to~~
4 ~~income than provided for by this section, the trustee shall~~
5 ~~allocate to income the additional amount necessary to obtain~~
6 ~~the marital deduction.]~~ Except as otherwise provided in
7 Subsection (e) of this section, Subsections (f) and (g) of this
8 section apply and Subsections (b) and (c) of this section do
9 not apply in determining the allocation of a payment made from
10 a separate fund to:

11 (1) a trust to which an election to qualify
12 for a marital deduction pursuant to Section 2056(b)(7) of the
13 Internal Revenue Code of 1986, as amended, has been made; or

14 (2) a trust that qualifies for the marital
15 deduction pursuant to Section 2056(b)(5) of the Internal
16 Revenue Code of 1986, as amended.

17 (e) Subsections (d), (f) and (g) of this section do
18 not apply if, and to the extent that, the series of payments
19 would, without the application of Subsection (d) of this
20 section, qualify for the marital deduction pursuant to Section
21 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

22 (f) A trustee shall determine the internal income
23 of each separate fund for the accounting period as if the
24 separate fund were a trust subject to the Uniform Principal and
25 Income Act. Upon request of the surviving spouse, the trustee

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1 shall demand that the person administering the separate fund
2 distribute the internal income to the trust. The trustee shall
3 allocate a payment from the separate fund to income to the
4 extent of the internal income of the separate fund and
5 distribute that amount to the surviving spouse. The trustee
6 shall allocate the balance of the payment to principal. Upon
7 request of the surviving spouse, the trustee shall allocate
8 principal to income to the extent the internal income of the
9 separate fund exceeds payments made from the separate fund to
10 the trust during the accounting period.

11 (g) If a trustee cannot determine the internal
12 income of a separate fund but can determine the value of the
13 separate fund, the internal income of the separate fund is
14 deemed to equal four percent of the fund's value according to
15 the most recent statement of value preceding the beginning of
16 the accounting period. If the trustee can determine neither
17 the internal income of the separate fund nor the fund's value,
18 the internal income of the fund is deemed to equal the product
19 of the interest rate and the present value of the expected
20 future payments as determined pursuant to Section 7520 of the
21 Internal Revenue Code of 1986, as amended, for the month
22 preceding the accounting period for which the computation is
23 made.

24 [~~e~~] (h) This section does not apply to [payments]
25 a payment to which Section [~~410~~] 46-3A-410 NMSA 1978 applies."

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1 Section 23. Section 46-3A-505 NMSA 1978 (being Laws 2001,
2 Chapter 113, Section 505) is amended to read:

3 "46-3A-505. INCOME TAXES.--

4 (a) A tax required to be paid by a trustee based on
5 receipts allocated to income must be paid from income.

6 (b) A tax required to be paid by a trustee based on
7 receipts allocated to principal must be paid from principal,
8 even if the tax is called an income tax by the taxing
9 authority.

10 (c) A tax required to be paid by a trustee on the
11 trust's share of an entity's taxable income must be paid
12 [~~proportionately~~]:

13 (1) from income to the extent that receipts
14 from the entity are allocated only to income; [~~and~~]

15 (2) from principal to the extent that [~~(A)~~]
16 receipts from the entity are allocated only to principal; [~~and~~

17 ~~(B) the trust's share of the entity's~~
18 ~~taxable income exceeds the total receipts described in~~
19 ~~Paragraphs (1) and (2)(A)]~~

20 (3) proportionately from principal and income
21 to the extent that receipts from the entity are allocated to
22 both income and principal; and

23 (4) from principal to the extent that the tax
24 exceeds the total receipts from the entity.

25 (d) [~~For purposes of this section, receipts~~

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1 ~~allocated to principal or income must be reduced by the amount~~
2 ~~distributed to a beneficiary from principal or income for which~~
3 ~~the trust receives a deduction in calculating the tax.] After~~
4 applying Subsections (a) through (c) of this section, the
5 trustee shall adjust income or principal receipts to the extent
6 that the trust's taxes are reduced because the trust receives a
7 deduction for payments made to a beneficiary."

8 Section 24. Section 46-10-1 NMSA 1978 (being Laws 2001,
9 Chapter 290, Section 1) is recompiled as Section 45-2-1101 NMSA
10 1978 and is amended to read:

11 "45-2-1101. SHORT TITLE.--~~[This act]~~ Chapter 45, Article
12 2, Part 11 NMSA 1978 may be cited as the "Uniform Disclaimer of
13 Property Interests Act".

14 Section 25. Section 46-10-2 NMSA 1978 (being Laws 2001,
15 Chapter 290, Section 2) is recompiled as Section 45-2-1102 NMSA
16 1978 and is amended to read:

17 "45-2-1102. DEFINITIONS.--As used in the Uniform
18 Disclaimer of Property Interests Act:

19 A. "disclaimant" means the person to whom a
20 disclaimed interest or power would have passed had the
21 disclaimer not been made;

22 B. "disclaimed interest" means the interest that
23 would have passed to the disclaimant had the disclaimer not
24 been made;

25 C. "disclaimer" means the refusal to accept an

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1 interest in or power over property;

2 D. "fiduciary" means a personal representative,
3 trustee, agent acting under a power of attorney or other person
4 authorized to act as a fiduciary with respect to the property
5 of another person;

6 E. "jointly held property" means property held in
7 the name of two or more persons under an arrangement in which
8 all holders have concurrent interests and under which the last
9 surviving holder is entitled to the whole of the property; and

10 ~~[F. "person" means an individual, corporation,~~
11 ~~business trust, estate, trust, partnership, limited liability~~
12 ~~company, association, joint venture, government governmental~~
13 ~~subdivision, agency or instrumentality, public corporation or~~
14 ~~any other legal or commercial entity;~~

15 ~~G. "state" means a state of the United States, the~~
16 ~~District of Columbia, Puerto Rico, the United States Virgin~~
17 ~~Islands or any territory or insular possession subject to the~~
18 ~~jurisdiction of the United States. The term includes an Indian~~
19 ~~tribe, an Indian band or an Alaskan native village recognized~~
20 ~~by federal law or formally acknowledged by a state; and~~

21 ~~H.]~~ F. "trust" means:

22 (1) an express trust, charitable or
23 noncharitable, with additions thereto, whenever and however
24 created; and

25 (2) a trust created pursuant to a statute,

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1 judgment or decree [~~which~~] that requires the trust to be
2 administered in the manner of an express trust."

3 Section 26. Section 46-10-6 NMSA 1978 (being Laws 2001,
4 Chapter 290, Section 6) is recompiled as Section 45-2-1106 NMSA
5 1978 and is amended to read:

6 "45-2-1106. DISCLAIMER OF INTEREST IN PROPERTY.--

7 A. As used in this section:

8 [~~(1) "time of distribution" means the time~~
9 ~~when a disclaimed interest would have taken effect in~~
10 ~~possession or enjoyment; and~~

11 ~~(2)]~~ (1) "future interest" means an interest
12 that takes effect in possession or enjoyment, if at all, later
13 than the time of its creation; and

14 (2) "time of distribution" means the time when
15 a disclaimed interest would have taken effect in possession or
16 enjoyment.

17 B. Except for a disclaimer governed by Section [7
18 ~~or 8 of the Uniform Disclaimer of Property Interests Act]~~
19 45-2-1107 or 45-2-1108 NMSA 1978, the following rules apply to
20 a disclaimer of an interest in property:

21 (1) The disclaimer takes effect as of the time
22 the instrument creating the interest becomes irrevocable, or,
23 if the interest arose under the law of intestate succession, as
24 of the time of the intestate's death.

25 (2) The disclaimed interest passes according

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1 to any provision in the instrument creating the interest
2 providing for the disposition of the interest, should it be
3 disclaimed, or of disclaimed interests in general.

4 (3) If the instrument does not contain a
5 provision described in Paragraph (2) of this subsection, the
6 following rules apply:

7 ~~[(a) If the disclaimant is an~~
8 ~~individual, the disclaimed interest passes as if the~~
9 ~~disclaimant had died immediately before the time of~~
10 ~~distribution. However, if, by law or under the instrument, the~~
11 ~~descendants of the disclaimant would share in the disclaimed~~
12 ~~interest by any method of representation had the disclaimant~~
13 ~~died before the time of distribution, the disclaimed interest~~
14 ~~passes only to the descendants of the disclaimant who survive~~
15 ~~the time of distribution.~~

16 ~~(b) If the disclaimant is not an~~
17 ~~individual, the disclaimed interest passes as if the~~
18 ~~disclaimant did not exist.]~~

19 (a) If the disclaimant is not an
20 individual, the disclaimed interest passes as if the
21 disclaimant did not exist.

22 (b) If the disclaimant is an individual,
23 except as otherwise provided in Subparagraphs (c) and (d) of
24 this paragraph, the disclaimed interest passes as if the
25 disclaimant had died immediately before the time of

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1 distribution.

2 (c) If, by law or under the instrument,
3 the descendants of the disclaimant would share in the
4 disclaimed interest by any method of representation had the
5 disclaimant died before the time of distribution, the
6 disclaimed interest passes only to the descendants of the
7 disclaimant who survive the time of distribution.

8 (d) If the disclaimed interest would
9 pass to the disclaimant's estate had the disclaimant died
10 before the time of distribution, the disclaimed interest
11 instead passes by representation to the descendants of the
12 disclaimant who survive the time of distribution. If no
13 descendant of the disclaimant survives the time of
14 distribution, the disclaimed interest passes to those persons,
15 including the state but excluding the disclaimant, and in such
16 shares as would succeed to the transferor's intestate estate
17 under the intestate succession law of the transferor's domicile
18 had the transferor died at the time of distribution. However,
19 if the transferor's surviving spouse is living but is remarried
20 at the time of distribution, the transferor is deemed to have
21 died unmarried at the time of distribution.

22 (4) Upon the disclaimer of a preceding
23 interest, a future interest held by a person other than the
24 disclaimant takes effect as if the disclaimant had died or
25 ceased to exist immediately before the time of distribution,

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1 but a future interest held by the disclaimant is not
2 accelerated in possession or enjoyment."

3 Section 27. Section 45-3-101 NMSA 1978 (being Laws 1975,
4 Chapter 257, Section 3-101) is amended to read:

5 "45-3-101. DEVOLUTION OF ESTATE AT DEATH--ADMINISTRATION
6 ON DEATHS OF HUSBAND AND WIFE.--

7 A. The power of a person to leave property by will
8 and the rights of creditors, devisees and heirs to [~~his~~] the
9 person's property are subject to the restrictions and
10 limitations contained in [~~Sections 3-101 through 3-1204~~]
11 Chapter 45, Article 3 NMSA 1978 to facilitate the prompt
12 settlement of estates.

13 B. Upon the death of a person, [~~his~~] the person's
14 separate property and [~~his~~] the person's share of community
15 property devolves:

16 (1) to the persons to whom the property is
17 devised by [~~his~~] the person's last will;

18 (2) to those indicated as substitutes for them
19 in cases involving revocation, lapse, [~~renunciation~~] disclaimer
20 or other circumstances pursuant to [~~Sections 2-508 and 2-601~~
21 ~~through 2-803~~] Chapter 45, Article 2 NMSA 1978 and the Uniform
22 Disclaimer of Property Interests Act affecting the devolution
23 of testate estates; or

24 (3) in the absence of testamentary
25 disposition, to [~~his~~] the person's heirs or to those indicated

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1 as substitutes for them in cases involving [~~renunciation~~]
2 revocation, lapse, disclaimer or other circumstances pursuant
3 to [~~Sections 2-301 through 2-405~~] Chapter 45, Article 2, Parts
4 3, 4 and 10 NMSA 1978 affecting the devolution of intestate
5 estates.

6 C. The devolution of separate property and the
7 decedent's share of community property is subject to rights to
8 the family allowance and personal property allowance, to rights
9 of creditors and to administration as provided in [~~Sections~~
10 ~~3-101 through 3-1204~~] Chapter 45, Article 3 NMSA 1978. The
11 surviving spouse's share of the community property is subject
12 to administration until the time for presentation of claims has
13 expired, and thereafter only to the extent necessary to pay
14 community claims."

15 Section 28. Section 45-3-309 NMSA 1978 (being Laws 1975,
16 Chapter 257, Section 3-309, as amended) is amended to read:

17 "45-3-309. INFORMAL APPOINTMENT PROCEEDINGS--COURT NOT
18 SATISFIED.--The probate or the district court may decline an
19 application for informal appointment of a personal
20 representative for any reason. A declination of informal
21 appointment is not an adjudication and does not preclude
22 appointment in formal proceedings."

23 Section 29. Section 45-3-703 NMSA 1978 (being Laws 1975,
24 Chapter 257, Section 3-703) is amended to read:

25 "45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO

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1 PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

2 A. A personal representative is under a duty to
3 settle and distribute the estate of a decedent in accordance
4 with the terms of any probated and effective will and the
5 Uniform Probate Code and as expeditiously and efficiently as is
6 consistent with the best interests of the estate. [~~He~~] The
7 personal representative shall use the authority conferred upon
8 [~~him~~] the personal representative by the Uniform Probate Code,
9 the terms of the will, if any, and any order in proceedings to
10 which [~~he~~] the personal representative is party for the best
11 interests of successors to the estate.

12 B. A personal representative [~~shall~~] may not be
13 surcharged for acts of administration or distribution if the
14 conduct in question was authorized at the time. Subject to
15 other obligations of administration, an informally probated
16 will [~~is authority~~] authorizes a personal representative to
17 administer and distribute the estate according to its terms.

18 C. An order of appointment of a personal
19 representative, whether issued in informal or formal
20 proceedings, [~~is authority~~] authorizes a personal
21 representative to distribute apparently intestate assets to the
22 heirs of the decedent if, at the time of distribution, the
23 personal representative is not aware of:

- 24 (1) a pending testacy proceeding;
25 (2) a proceeding to vacate an order entered in

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1 an earlier testacy proceeding;

2 (3) a formal proceeding questioning [~~his~~] the
3 personal representative's appointment or fitness to continue;
4 or

5 (4) a supervised administration proceeding.

6 D. [~~Nothing in~~] This section [~~affects~~] does not
7 affect the duty of the personal representative to administer
8 and distribute the estate in accordance with the rights of
9 claimants whose claims have been allowed, the surviving spouse,
10 any minor and dependent children and any pretermitted child of
11 the decedent.

12 E. Except as to proceedings [~~which~~] that do not
13 survive the death of the decedent, a personal representative of
14 a decedent domiciled in New Mexico at [~~his~~] the decedent's
15 death has the same standing to sue and be sued in the courts of
16 New Mexico and the courts of any other jurisdiction as [~~his~~]
17 the decedent had immediately prior to death."

18 Section 30. Section 45-3-803 NMSA 1978 (being Laws 1975,
19 Chapter 257, Section 3-803, as amended) is amended to read:

20 "45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

21 A. All claims against a decedent's estate that arose
22 before the death of the decedent, including claims of the state
23 and any political subdivision of the state, whether due or to
24 become due, absolute or contingent, liquidated or unliquidated
25 or founded on contract, tort or other legal basis, if not

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1 barred earlier by another statute of limitations or nonclaim
2 statute, are barred against the estate, the personal
3 representative and the heirs, [~~and~~] devisees and nonprobate
4 transferees of the decedent unless presented within the earlier
5 of the following:

6 (1) one year after the decedent's death; or

7 (2) the time provided by Subsection A of Section
8 45-3-801 NMSA 1978 for creditors who are given actual notice
9 and the time provided in Subsection B of Section 45-3-801 NMSA
10 1978 for all creditors barred by publication.

11 B. A claim described in Subsection A of this section
12 that is barred by the nonclaim statute of the decedent's
13 domicile before the giving of notice to creditors in this state
14 is barred in this state.

15 C. All claims against a decedent's estate that arise
16 at or after the death of the decedent, including claims of the
17 state and any political subdivision of the state, whether due
18 or to become due, absolute or contingent, liquidated or
19 unliquidated or founded on contract, tort or other legal basis,
20 are barred against the estate, the personal representative and
21 the heirs and devisees of the decedent unless presented as
22 follows:

23 (1) a claim based on a contract with the
24 personal representative within four months after performance by
25 the personal representative is due; or

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1 (2) any other claim within the later of four
2 months after it arises or the time specified in Paragraph (1)
3 of this subsection.

4 D. Nothing in this section affects or prevents:

5 (1) any proceeding to enforce any mortgage,
6 pledge or other lien upon property of the estate;

7 (2) to the limits of the insurance protection
8 only, ~~any~~ a proceeding to establish liability of the decedent
9 or the personal representative for which ~~he~~ the decedent or
10 personal representative is protected by liability insurance; or

11 (3) collection of compensation for services
12 rendered and reimbursement for expenses advanced by the
13 personal representative or by the attorney or accountant for
14 the personal representative of the estate."

15 Section 31. Section 45-3-913 NMSA 1978 (being Laws 1975,
16 Chapter 257, Section 3-913, as amended) is amended to read:

17 "45-3-913. DISTRIBUTIONS TO TRUSTEE.--

18 A. Before distributing to a trustee, the personal
19 representative may require that the trust be registered if the
20 state in which it is to be administered provides for
21 registration and that the trustee inform the beneficiaries as
22 provided in ~~[Section 45-7-303 NMSA 1978]~~ the Uniform Trust Code
23 or other law governing the trust.

24 B. If the trust instrument does not excuse the
25 trustee from giving bond, the personal representative may

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1 petition the appropriate court to require that the trustee post
2 bond if [~~he~~] the personal representative apprehends that
3 distribution might jeopardize the interests of persons who are
4 not able to protect themselves, and [~~he~~] the personal
5 representative may withhold distribution until the court has
6 acted.

7 C. No inference of negligence on the part of the
8 personal representative shall be drawn from [~~his~~] the personal
9 representative's failure to exercise the authority conferred by
10 Subsections A and B of this section."

11 Section 32. Section 45-3-915 NMSA 1978 (being Laws 1975,
12 Chapter 257, Section 3-915, as amended) is amended to read:

13 "45-3-915. DISTRIBUTION TO PERSON UNDER DISABILITY.--

14 A. A personal representative may discharge [~~his~~] an
15 obligation to distribute to [~~any~~] a minor or person under other
16 disability by distributing in a manner expressly provided in
17 the will or other governing instrument.

18 B. Unless contrary to an express provision in the
19 will or other governing instrument, the personal representative
20 may discharge [~~his~~] an obligation to distribute to a minor or
21 person under other disability as authorized by Section
22 [~~45-5-101~~] 45-5-103 NMSA 1978 or any other statute. If the
23 personal representative knows that a conservator has been
24 appointed or that a proceeding for appointment of a conservator
25 is pending, the personal representative is authorized to

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1 distribute only to the conservator.

2 C. If the heir or devisee is under disability other
3 than minority, the personal representative is authorized to
4 distribute to:

5 (1) an [~~attorney in fact~~] agent who has
6 authority under a power of attorney to receive property for
7 that person; or

8 (2) the spouse, parent or other close relative
9 with whom the person under disability resides if the
10 distribution is of amounts not exceeding ten thousand dollars
11 (\$10,000) a year or property not exceeding ten thousand dollars
12 (\$10,000) in value unless the court authorizes a larger amount
13 or greater value.

14 D. Persons receiving money or property for the
15 disabled person are obligated to apply the money or property to
16 the support of the disabled person. Persons may not pay
17 themselves except by way of reimbursement for out-of-pocket
18 expenses for goods and services necessary for the support of
19 the disabled person. Excess sums must be preserved for future
20 support of the disabled person. The personal representative is
21 not responsible for the proper application of money or property
22 distributed pursuant to this subsection."

23 Section 33. Section 45-3-1201 NMSA 1978 (being Laws 1975,
24 Chapter 257, Section 3-1201, as amended) is amended to read:

25 "45-3-1201. COLLECTION OF PERSONAL PROPERTY BY

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1 AFFIDAVIT.--

2 A. Thirty days after the death of a decedent, any
3 person indebted to the decedent or having possession of
4 tangible personal property or an instrument evidencing a debt,
5 obligation, stock or chose in action belonging to the decedent
6 shall make payment of the indebtedness or deliver the tangible
7 personal property or an instrument evidencing a debt,
8 obligation, stock or chose in action to a person claiming to be
9 the successor of the decedent upon being presented an affidavit
10 made by or on behalf of the successor stating that:

11 (1) the value of the entire estate, wherever
12 located, less liens and encumbrances, does not exceed [~~thirty~~
13 ~~thousand dollars (\$30,000)] fifty thousand dollars (\$50,000);~~

14 (2) thirty days have elapsed since the death of
15 the decedent;

16 (3) no application or petition for the
17 appointment of a personal representative is pending or has been
18 granted in any jurisdiction; and

19 (4) the claiming successor is entitled to
20 payment or delivery of the property.

21 B. A transfer agent of any security shall change the
22 registered ownership on the books of a corporation from the
23 decedent to the successor or successors upon the presentation
24 of an affidavit as provided in Subsection A of this section.

25 C. The affidavit made pursuant to this section may

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1 not be used to perfect title to real estate."

2 Section 34. Section 45-3-1205 NMSA 1978 (being Laws 1985,
3 Chapter 12, Section 1) is amended to read:

4 "45-3-1205. [~~SMALL ESTATES~~] TRANSFER OF TITLE TO
5 HOMESTEAD TO SURVIVING SPOUSE BY AFFIDAVIT.--

6 A. Where a husband and wife own a homestead as
7 community property and when either the husband or wife dies
8 intestate or dies testate and by [~~their~~] the husband's or
9 wife's will [~~devise their~~] devises the husband's or wife's
10 interest in the homestead to the surviving spouse, the
11 homestead passes to the survivor and no probate or
12 administration is necessary.

13 B. Six months after the death of a decedent, the
14 surviving spouse may record with the county clerk in the county
15 in which the homestead is located an affidavit describing the
16 real property and stating that:

17 (1) six months have elapsed since the death of
18 the decedent as shown in a certified copy of the death
19 certificate attached to the affidavit;

20 (2) the affiant and the decedent were at the
21 time of the death of the decedent married and owned the
22 homestead as community property;

23 (3) a copy of the deed with a legal description
24 of the homestead is attached to the affidavit;

25 (4) but for the homestead, the decedent's estate

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1 need not be subject to any judicial probate proceeding either
2 in district court or probate court;

3 (5) no application or petition for appointment
4 of a personal representative or for admittance of a will to
5 probate is pending or has been granted in any jurisdiction;

6 (6) funeral expenses, expenses of last illness
7 and all unsecured debts of the decedent have been paid;

8 (7) the affiant is the surviving spouse of the
9 decedent and is entitled to title to the homestead by intestate
10 succession as provided in Section 45-2-102 NMSA 1978 or by
11 devise under a valid last will of the decedent, the original of
12 which is attached to the affidavit;

13 (8) no other person has a right to the interest
14 of the decedent in the described property;

15 (9) no federal or state tax is due on the
16 decedent's estate; and

17 (10) the affiant affirms that all statements in
18 the affidavit are true and correct and further acknowledges
19 that any false statement may subject the person to penalties
20 relating to perjury and subornation of perjury.

21 C. As used in this section, "homestead" means the
22 principal place of residence of the decedent or surviving
23 spouse or the last principal place of residence if neither the
24 decedent nor the surviving spouse is residing in that residence
25 because of illness or incapacitation and ~~which~~ that consists

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1 of one or more dwellings together with appurtenant structures,
2 the land underlying both the dwellings and the appurtenant
3 structures and a quantity of land reasonably necessary for
4 parking and other uses that facilitates the use of the
5 dwellings and appurtenant structures, and provided the full
6 value of this property as assessed for property taxation
7 purposes does not exceed [~~one hundred thousand dollars~~
8 ~~(\$100,000)~~] five hundred thousand dollars (\$500,000)."

9 Section 35. Section 45-5-101 NMSA 1978 (being Laws 1975,
10 Chapter 257, Section 5-101, as amended) is amended to read:

11 "45-5-101. DEFINITIONS AND USE OF TERMS.--Unless
12 otherwise apparent from the context or unless otherwise
13 specifically defined in other sections that are applicable to
14 specific articles, parts of sections of the Uniform Probate
15 Code, as used in Chapter 45, Article 5 NMSA 1978:

16 A. "conservator" [~~is as defined in Section 45-1-201~~
17 ~~NMSA 1978~~] means a person who is appointed by a court to manage
18 the property or financial affairs or both of a protected
19 person;

20 B. "court" means the district court or the children's
21 or family division of the district court where such
22 jurisdiction is conferred by the Children's Code;

23 C. "functional impairment" means an impairment that
24 is measured by a person's inability to manage the person's
25 personal care or the person's inability to manage the person's

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1 estate or financial affairs or both;

2 D. "guardian" [~~is as defined~~] has the same meaning as
3 set forth in Section 45-1-201 NMSA 1978;

4 E. "guardian ad litem" [~~is as defined~~] has the same
5 meaning as set forth in Section 45-1-201 NMSA 1978;

6 F. "incapacitated person" means any person who
7 demonstrates over time either partial or complete functional
8 impairment by reason of mental illness, mental deficiency,
9 physical illness or disability, chronic use of drugs, chronic
10 intoxication or other cause, except minority, to the extent
11 that the person is unable to manage the person's personal
12 affairs or the person is unable to manage the person's estate
13 or financial affairs or both;

14 G. "inability to manage the person's personal care"
15 means the inability, as evidenced by recent behavior, to meet
16 one's needs for medical care, nutrition, clothing, shelter,
17 hygiene or safety so that physical injury, illness or disease
18 has occurred or is likely to occur in the near future;

19 H. "inability to manage the person's estate or
20 financial affairs or both" means gross mismanagement, as
21 evidenced by recent behavior, of one's income and resources or
22 medical inability to manage one's income and resources that has
23 led or is likely in the near future to lead to financial
24 vulnerability;

25 I. "interested person" means any person who has an

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1 interest in the welfare of the person to be protected [~~under~~
2 ~~this article~~] pursuant to Chapter 45, Article 5 NMSA 1978;

3 J. "least restrictive form of intervention" means
4 that the guardianship or conservatorship imposed on the
5 incapacitated person or minor ward represents only those
6 limitations necessary to provide the needed care and
7 rehabilitative services and that the incapacitated person or
8 minor ward shall enjoy the greatest amount of personal freedom
9 and civil liberties;

10 K. "letters" [~~is as defined~~] has the same meaning as
11 set forth in Section 45-1-201 NMSA 1978;

12 L. "limited conservator" means any person who is
13 qualified to manage the estate and financial affairs of an
14 incapacitated person pursuant to a court appointment in a
15 limited conservatorship;

16 M. "limited conservatorship" means that an
17 incapacitated person is subject to a conservator's exercise of
18 some but not all of the powers enumerated in Sections 45-5-424
19 and 45-5-425 NMSA 1978;

20 N. "limited guardian" means any person who is
21 qualified to manage the care, custody and control of an
22 incapacitated person pursuant to a court appointment of a
23 limited guardianship;

24 O. "limited guardianship" means that an incapacitated
25 person is subject to a guardian's exercise of some but not all

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1 of the powers enumerated in Section 45-5-312 NMSA 1978;

2 P. "minor" [~~is as defined~~] has the same meaning as
3 set forth in Section 45-1-201 NMSA 1978;

4 Q. "minor ward" means a minor for whom a guardian or
5 conservator has been appointed solely because of minority;

6 R. "parent" means a parent whose parental rights have
7 not been terminated;

8 [~~R.~~] S. "protective proceeding" means a
9 conservatorship proceeding under Section 45-5-401 NMSA 1978;

10 [~~S.~~] T. "protected person" means a minor or other
11 person for whom a conservator has been appointed or other
12 protective order has been made;

13 [~~T.~~] U. "qualified health care professional" means a
14 physician, psychologist, physician assistant, nurse
15 practitioner or other health care practitioner whose training
16 and expertise aid in the assessment of functional impairment;

17 [~~U.~~] V. "ward" means a person for whom a guardian has
18 been appointed; and

19 [~~V.~~] W. "visitor" means a person who is an appointee
20 of the court, who has no personal interest in the proceeding
21 and who has been trained or has the expertise to evaluate
22 appropriately [~~evaluate~~] the needs of the person who is
23 allegedly incapacitated. A "visitor" may include, but is not
24 limited to, a psychologist, a social worker, a developmental
25 incapacity professional, a physical and occupational therapist,

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1 an educator and a rehabilitation worker."

2 Section 36. Section 45-5-103 NMSA 1978 (being Laws 1975,
3 Chapter 257, Section 5-103) is amended to read:

4 "45-5-103. FACILITY OF PAYMENT OR DELIVERY.--

5 A. ~~Any~~ A person under a duty to pay or deliver
6 money or personal property to a minor may perform this duty, in
7 amounts not exceeding five thousand dollars (\$5,000) per
8 ~~annum~~ year, by paying or delivering the money or property to:

9 (1) the minor, if ~~he~~ the minor is married;

10 (2) ~~any~~ a person having the care and custody
11 of the minor and with whom the minor resides;

12 (3) a guardian of the minor; ~~or~~

13 (4) a financial institution for deposit in a
14 federally insured savings account in the sole name of the minor
15 and giving notice of the deposit to the minor; or

16 (5) a custodian for the minor pursuant to the
17 Uniform Transfers to Minors Act.

18 B. This section does not apply if the person making
19 payment or delivery has actual knowledge that a conservator has
20 been appointed or proceedings for appointment of a conservator
21 of the estate of the minor are pending. The persons, other
22 than the minor or any financial institution under Paragraph (4)
23 of Subsection A of this section, receiving money or property
24 for a minor are obligated to apply the money to the support and
25 education of the minor but ~~may~~ shall not pay themselves

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1 except by way of reimbursement for out-of-pocket expenses for
2 goods and services necessary for the minor's support. Any
3 excess sums shall be preserved for future support of the minor,
4 and any balance not so used and any property received for the
5 minor [~~must~~] shall be turned over to the minor when [~~he attains~~
6 ~~majority~~] the minor ceases to be a minor. Persons who pay or
7 deliver in accordance with provisions of this section are not
8 responsible for the proper application of such payments."

9 Section 37. Section 45-5-208 NMSA 1978 (being Laws 1975,
10 Chapter 257, Section 5-208) is amended to read:

11 "45-5-208. CONSENT TO SERVICE BY ACCEPTANCE OF
12 APPOINTMENT--NOTICE.--By accepting a [~~testamentary~~] parental or
13 court appointment as guardian, a guardian submits personally to
14 the jurisdiction of the court in any proceeding relating to the
15 guardianship that may be instituted by any interested person.
16 Notice of [~~any~~] a proceeding shall be delivered to the guardian
17 or mailed to [~~him~~] the guardian at [~~his~~] the address [~~as~~]
18 listed in the court records and to [~~his~~] the address [~~as~~] then
19 known to the petitioner. Letters of guardianship [~~must~~] shall
20 indicate whether the guardian was appointed by [~~will~~] parental
21 appointment or by court order."

22 Section 38. Section 45-5-210 NMSA 1978 (being Laws 1975,
23 Chapter 257, Section 5-210) is amended to read:

24 "45-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN--
25 GENERAL.--A guardian's authority and responsibility terminate

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1 upon the death, resignation or removal of the guardian or upon
2 the minor's death, adoption, emancipation, marriage or
3 attainment of majority, but termination does not affect [~~his~~]
4 the guardian's liability for prior acts nor [~~his~~] the
5 guardian's obligation to account for money and property of [~~his~~
6 ~~ward~~] the protected person. Resignation of a guardian does not
7 terminate the guardianship until it has been approved by the
8 court. A testamentary appointment under an informally probated
9 will terminates if the will is later denied probate in a formal
10 proceeding."

11 Section 39. Section 45-5-417 NMSA 1978 (being Laws 1975,
12 Chapter 257, Section 5-417) is amended to read:

13 "45-5-417. GENERAL DUTY OF CONSERVATOR.--In the exercise
14 of [~~his~~] a conservator's powers, a conservator shall act as a
15 fiduciary and shall observe the standards of care applicable to
16 trustees as described by [~~Section 7-302~~] Sections 46A-8-801
17 through 46A-8-807 NMSA 1978."

18 Section 40. A new Section 45-5-506 NMSA 1978 is enacted
19 to read:

20 "45-5-506. [NEW MATERIAL] SHORT TITLE.--Sections 45-5-506
21 through 45-5-528 NMSA 1978 may be cited as the "Uniform Adult
22 Guardianship and Protective Proceedings Jurisdiction Act"."

23 Section 41. A new Section 45-5-507 NMSA 1978 is enacted
24 to read:

25 "45-5-507. [NEW MATERIAL] DEFINITIONS.--As used in the

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1 Uniform Adult Guardianship and Protective Proceedings

2 Jurisdiction Act:

3 A. "adult" means an individual who has attained
4 eighteen years of age;

5 B. "conservator" means a person appointed by the
6 court to administer the property of an adult, including a
7 person appointed pursuant to Section 45-5-401 NMSA 1978;

8 C. "court" means the district court;

9 D. "guardian" means a person appointed by the court
10 to make decisions regarding the person of an adult, including a
11 person appointed pursuant to Section 45-5-301 NMSA 1978;

12 E. "guardianship order" means an order appointing a
13 guardian;

14 F. "guardianship proceeding" means a judicial
15 proceeding in which an order for the appointment of a guardian
16 is sought or has been issued;

17 G. "incapacitated person" means an adult for whom a
18 guardian has been appointed;

19 H. "party" means the respondent, petitioner,
20 guardian, conservator or any other person allowed by the court
21 to participate in a guardianship or protective proceeding;

22 I. "person", except in the term "incapacitated
23 person" or "protected person", means an individual,
24 corporation, business trust, estate, trust, partnership,
25 limited liability company, association, joint venture, public

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1 corporation, government or governmental subdivision, agency or
2 instrumentality, or any other legal or commercial entity;

3 J. "protected person" means an adult for whom a
4 protective order has been issued;

5 K. "protective order" means an order appointing a
6 conservator or other order related to management of an adult's
7 property;

8 L. "protective proceeding" means a judicial
9 proceeding in which a protective order is sought or has been
10 issued; and

11 M. "respondent" means an adult for whom a protective
12 order or the appointment of a guardian is sought."

13 Section 42. A new Section 45-5-508 NMSA 1978 is enacted
14 to read:

15 "45-5-508. [NEW MATERIAL] INTERNATIONAL APPLICATION OF
16 THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS
17 JURISDICTION ACT.--A New Mexico court may treat a foreign
18 country as if it were a state for the purpose of applying
19 Subparts 1, 2, 3 and 5 of the Uniform Adult Guardianship and
20 Protective Proceedings Jurisdiction Act."

21 Section 43. A new Section 45-5-509 NMSA 1978 is enacted
22 to read:

23 "45-5-509. [NEW MATERIAL] COMMUNICATION BETWEEN COURTS.--

24 A. A New Mexico court may communicate with a court in
25 another state concerning a proceeding arising pursuant to the

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1 Uniform Adult Guardianship and Protective Proceedings
2 Jurisdiction Act. The court may allow the parties to
3 participate in the communication. Except as otherwise provided
4 in Subsection B of this section and except as otherwise
5 provided by rules adopted by the New Mexico supreme court, the
6 court shall make a record of the communication. The record may
7 be limited to the fact that the communication occurred.

8 B. Except as otherwise provided by rules adopted by
9 the New Mexico supreme court, courts may communicate concerning
10 schedules, calendars, court records and other administrative
11 matters without making a record."

12 Section 44. A new Section 45-5-510 NMSA 1978 is enacted
13 to read:

14 "45-5-510. [NEW MATERIAL] COOPERATION BETWEEN COURTS.--

15 A. Except as otherwise provided by rules adopted by
16 the New Mexico supreme court, in a guardianship or protective
17 proceeding in New Mexico, a New Mexico court may request the
18 appropriate court of another state to do any of the following:

19 (1) hold an evidentiary hearing;

20 (2) order a person in that state to produce
21 evidence or give testimony pursuant to procedures of that
22 state;

23 (3) order that an evaluation or assessment be
24 made of the respondent;

25 (4) order any appropriate investigation of a

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1 person involved in a proceeding;

2 (5) forward to the New Mexico court a certified
3 copy of the transcript or other record of a hearing pursuant to
4 Paragraph (1) of this subsection or any other proceeding, any
5 evidence otherwise produced pursuant to Paragraph (2) of this
6 subsection and any evaluation or assessment prepared in
7 compliance with an order pursuant to Paragraph (3) or (4) of
8 this subsection;

9 (6) issue any order necessary to assure the
10 appearance in the proceeding of a person whose presence is
11 necessary for the court to make a determination, including the
12 respondent or the incapacitated or protected person; and

13 (7) issue an order authorizing the release of
14 medical, financial, criminal or other relevant information in
15 that state, including protected health information as defined
16 in 45 C.F.R. Section 164.504, as amended.

17 B. If a court of another state in which a
18 guardianship or protective proceeding is pending requests
19 assistance of the kind provided in Subsection A of this
20 section, a New Mexico court has jurisdiction for the limited
21 purpose of granting the request or making reasonable efforts to
22 comply with the request."

23 Section 45. A new Section 45-5-511 NMSA 1978 is enacted
24 to read:

25 "45-5-511. [NEW MATERIAL] TAKING TESTIMONY IN ANOTHER

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1 STATE.--

2 A. In a guardianship or protective proceeding, in
3 addition to other procedures that may be available, testimony
4 of a witness who is located in another state may be offered by
5 deposition or other means allowable in New Mexico for testimony
6 taken in another state. The court on its own motion may order
7 that the testimony of a witness be taken in another state and
8 may prescribe the manner in which, and the terms upon which,
9 the testimony is to be taken.

10 B. In a guardianship or protective proceeding, a New
11 Mexico court may permit a witness located in another state to
12 be deposed or to testify by telephone or audiovisual or other
13 electronic means. A New Mexico court shall cooperate with the
14 court of the other state in designating an appropriate location
15 for the deposition or testimony.

16 C. Except as otherwise provided by rules adopted by
17 the New Mexico supreme court, documentary evidence transmitted
18 from another state to a New Mexico court by technological means
19 that do not produce an original writing shall not be excluded
20 from evidence on an objection based on the best evidence rule."

21 Section 46. A new Section 45-5-512 NMSA 1978 is enacted
22 to read:

23 "45-5-512. [NEW MATERIAL] DEFINITIONS--SIGNIFICANT-
24 CONNECTION FACTORS.--

25 A. As used in Subpart 2 of the Uniform Adult

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1 Guardianship and Protective Proceedings Jurisdiction Act:

2 (1) "emergency" means a circumstance that likely
3 will result in substantial harm to a respondent's health,
4 safety or welfare and for which the appointment of a guardian
5 is necessary because no other person has authority and is
6 willing to act on the respondent's behalf;

7 (2) "home state" means the state in which the
8 respondent was physically present, including any period of
9 temporary absence, for at least six consecutive months
10 immediately before the filing of a petition for a protective
11 order or the appointment of a guardian; or, if none, the state
12 in which the respondent was physically present, including any
13 period of temporary absence, for at least six consecutive
14 months ending within the six months prior to the filing of the
15 petition; and

16 (3) "significant-connection state" means a
17 state, other than the home state, with which a respondent has a
18 significant connection other than mere physical presence and in
19 which substantial evidence concerning the respondent is
20 available.

21 B. In determining pursuant to Section 45-5-514 and
22 Subsection E of Section 45-5-521 NMSA 1978 whether a respondent
23 has a significant connection with a particular state, the court
24 shall consider:

25 (1) the location of the respondent's family and

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1 other persons required to be notified of the guardianship or
2 protective proceeding;

3 (2) the length of time the respondent at any
4 time was physically present in the state and the duration of
5 any absence;

6 (3) the location of the respondent's property;
7 and

8 (4) the extent to which the respondent has ties
9 to the state, such as voting registration, state or local tax
10 return filing, vehicle registration, driver's license, social
11 relationship and receipt of services."

12 Section 47. A new Section 45-5-513 NMSA 1978 is enacted
13 to read:

14 "45-5-513. [NEW MATERIAL] EXCLUSIVE BASIS.--Subpart 2 of
15 the Uniform Adult Guardianship and Protective Proceedings
16 Jurisdiction Act provides the exclusive jurisdictional basis
17 for a New Mexico court to appoint a guardian or issue a
18 protective order for an adult."

19 Section 48. A new Section 45-5-514 NMSA 1978 is enacted
20 to read:

21 "45-5-514. [NEW MATERIAL] JURISDICTION.--A New Mexico
22 court has jurisdiction to appoint a guardian or issue a
23 protective order for a respondent if:

24 A. New Mexico is the respondent's home state;

25 B. on the date the petition is filed, New Mexico is a

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1 significant-connection state and:

2 (1) the respondent does not have a home state or
3 a court of the respondent's home state has declined to exercise
4 jurisdiction because New Mexico is a more appropriate forum; or

5 (2) the respondent has a home state, a petition
6 for an appointment or order is not pending in a court of that
7 state or another significant-connection state and, before the
8 court makes the appointment or issues the order:

9 (a) a petition for an appointment or order
10 is not filed in the respondent's home state;

11 (b) an objection to the court's jurisdiction
12 is not filed by a person required to be notified of the
13 proceeding; and

14 (c) the court in New Mexico concludes that
15 it is an appropriate forum pursuant to the factors set forth in
16 Section 45-5-517 NMSA 1978;

17 C. New Mexico does not have jurisdiction pursuant
18 either to Subsection A or B of this section, the respondent's
19 home state and all significant-connection states have declined
20 to exercise jurisdiction because New Mexico is the more
21 appropriate forum and jurisdiction in New Mexico is consistent
22 with the constitutions of New Mexico and the United States; or

23 D. the requirements for special jurisdiction pursuant
24 to Section 45-5-515 NMSA 1978 are met."

25 Section 49. A new Section 45-5-515 NMSA 1978 is enacted

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1 to read:

2 "45-5-515. [NEW MATERIAL] SPECIAL JURISDICTION.--

3 A. A New Mexico court lacking jurisdiction pursuant
4 to Section 45-5-514 NMSA 1978 has special jurisdiction to do
5 any of the following:

6 (1) appoint a guardian in an emergency for a
7 term not exceeding ninety days for a respondent who is
8 physically present in New Mexico;

9 (2) issue a protective order with respect to
10 real or tangible personal property located in New Mexico; and

11 (3) appoint a guardian or conservator for an
12 incapacitated or protected person for whom a provisional order
13 to transfer the proceeding from another state has been issued
14 pursuant to procedures similar to Section 45-5-521 NMSA 1978.

15 B. If a petition for the appointment of a guardian in
16 an emergency is brought in New Mexico and New Mexico was not
17 the respondent's home state on the date the petition was filed,
18 the court shall dismiss the proceeding at the request of the
19 court of the home state, if any, whether dismissal is requested
20 before or after the emergency appointment."

21 Section 50. A new Section 45-5-516 NMSA 1978 is enacted
22 to read:

23 "45-5-516. [NEW MATERIAL] EXCLUSIVE AND CONTINUING
24 JURISDICTION.--Except as otherwise provided in Section
25 45-5-515 NMSA 1978, a court that has appointed a guardian or

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1 issued a protective order consistent with the Uniform Adult
2 Guardianship and Protective Proceedings Jurisdiction Act has
3 exclusive and continuing jurisdiction over the proceeding until
4 it is terminated by the court or the appointment or order
5 expires by its own terms."

6 Section 51. A new Section 45-5-517 NMSA 1978 is enacted
7 to read:

8 "45-5-517. [NEW MATERIAL] APPROPRIATE FORUM.--

9 A. A New Mexico court having jurisdiction pursuant to
10 Section 45-5-514 NMSA 1978 to appoint a guardian or issue a
11 protective order may decline to exercise its jurisdiction if it
12 determines at any time that a court of another state is a more
13 appropriate forum.

14 B. If a New Mexico court declines to exercise its
15 jurisdiction pursuant to Subsection A of this section, it shall
16 either dismiss or stay the proceeding. The court may impose
17 any condition the court considers just and proper, including
18 the condition that a petition for the appointment of a guardian
19 or issuance of a protective order be filed promptly in another
20 state.

21 C. In determining whether it is an appropriate forum,
22 the court shall consider all relevant factors, including:

- 23 (1) any expressed preference of the respondent;
24 (2) whether abuse, neglect or exploitation of
25 the respondent has occurred or is likely to occur and which

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1 state could best protect the respondent from the abuse, neglect
2 or exploitation;

3 (3) the length of time the respondent was
4 physically present in or was a legal resident of New Mexico or
5 another state;

6 (4) the distance of the respondent from the
7 court in each state;

8 (5) the financial circumstances of the
9 respondent's estate;

10 (6) the nature and location of the evidence;

11 (7) the ability of the court in each state to
12 decide the issue expeditiously and the procedures necessary to
13 present evidence;

14 (8) the familiarity of the court of each state
15 with the facts and issues in the proceeding; and

16 (9) if an appointment of a guardian or
17 conservator were to be made, the court's ability to monitor the
18 conduct of the guardian or conservator."

19 Section 52. A new Section 45-5-518 NMSA 1978 is enacted
20 to read:

21 "45-5-518. [NEW MATERIAL] JURISDICTION DECLINED BY REASON
22 OF CONDUCT.--

23 A. If at any time a New Mexico court determines that
24 it acquired jurisdiction to appoint a guardian or issue a
25 protective order because of unjustifiable conduct, the court

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1 may:

2 (1) decline to exercise jurisdiction;

3 (2) exercise jurisdiction for the limited
4 purpose of fashioning an appropriate remedy to:

5 (a) ensure the health, safety and welfare of
6 the respondent or the protection of the respondent's property;

7 or

8 (b) prevent a repetition of the
9 unjustifiable conduct, including staying the proceeding until a
10 petition for the appointment of a guardian or issuance of a
11 protective order is filed in a court of another state having
12 jurisdiction; or

13 (3) continue to exercise jurisdiction after
14 considering:

15 (a) the extent to which the respondent and
16 all persons required to be notified of the proceedings have
17 acquiesced in the exercise of the court's jurisdiction;

18 (b) whether it is a more appropriate forum
19 than the court of any other state pursuant to the factors set
20 forth in Subsection C of Section 45-5-517 NMSA 1978; and

21 (c) whether the court of any other state
22 would have jurisdiction under factual circumstances in
23 substantial conformity with the jurisdictional standards of
24 Section 45-5-514 NMSA 1978.

25 B. If a New Mexico court determines that it acquired

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1 jurisdiction to appoint a guardian or to issue a protective
2 order because a party seeking to invoke its jurisdiction
3 engaged in unjustifiable conduct, it may assess against that
4 party necessary and reasonable expenses, including attorney
5 fees, investigative fees, court costs, communication expenses,
6 witness fees and expenses and travel expenses. The court shall
7 not assess fees, costs or expenses of any kind against New
8 Mexico or a governmental subdivision, agency or instrumentality
9 of New Mexico unless authorized by law other than the Uniform
10 Adult Guardianship and Protective Proceedings Jurisdiction
11 Act."

12 Section 53. A new Section 45-5-519 NMSA 1978 is enacted
13 to read:

14 "45-5-519. [NEW MATERIAL] NOTICE OF PROCEEDING.--If a
15 petition for the appointment of a guardian or issuance of a
16 protective order is brought in New Mexico and New Mexico was
17 not the respondent's home state on the date the petition was
18 filed, in addition to complying with the notice requirements of
19 New Mexico, notice of the petition shall be given to those
20 persons who would be entitled to notice of the petition if a
21 proceeding were brought in the respondent's home state. The
22 notice shall be given in the same manner as notice is required
23 to be given in New Mexico."

24 Section 54. A new Section 45-5-520 NMSA 1978 is enacted
25 to read:

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1 "45-5-520. [NEW MATERIAL] PROCEEDINGS IN MORE THAN ONE
2 STATE.--Except for a petition for the appointment of a guardian
3 in an emergency or issuance of a protective order limited to
4 property located in New Mexico pursuant to Paragraph (1) or (2)
5 of Subsection A of Section 45-5-515 NMSA 1978, if a petition
6 for the appointment of a guardian or issuance of a protective
7 order is filed in New Mexico and in another state and neither
8 petition has been dismissed or withdrawn, the following rules
9 apply:

10 A. if the New Mexico court has jurisdiction pursuant
11 to Section 45-5-514 NMSA 1978, it may proceed with the case
12 unless a court in another state acquires jurisdiction pursuant
13 to provisions similar to Section 45-5-514 NMSA 1978 before the
14 appointment of the guardian or issuance of the protective
15 order; and

16 B. if the New Mexico court does not have jurisdiction
17 pursuant to Section 45-5-514 NMSA 1978, whether at the time the
18 petition is filed or at any time before the appointment of the
19 guardian or issuance of the protective order, the court shall
20 stay the proceeding and communicate with the court in the other
21 state. If the court in the other state has jurisdiction, the
22 New Mexico court shall dismiss the petition unless the court in
23 the other state determines that the New Mexico court is a more
24 appropriate forum."

25 Section 55. A new Section 45-5-521 NMSA 1978 is enacted

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1 to read:

2 "45-5-521. [NEW MATERIAL] TRANSFER OF GUARDIANSHIP OR
3 CONSERVATORSHIP TO ANOTHER STATE.--

4 A. A guardian or conservator appointed in New Mexico
5 may petition the court to transfer the guardianship or
6 conservatorship to another state.

7 B. Notice of a petition pursuant to Subsection A of
8 this section shall be given to the persons that would be
9 entitled to notice of a petition in New Mexico for the
10 appointment of a guardian or conservator.

11 C. On the court's own motion, or on request of the
12 guardian or conservator, the incapacitated or protected person
13 or other person required to be notified of the petition, the
14 court shall hold a hearing on a petition filed pursuant to
15 Subsection A of this section.

16 D. The court shall issue an order provisionally
17 granting a petition to transfer a guardianship and shall direct
18 the guardian to petition for guardianship in the other state if
19 the court is satisfied that the guardianship will be accepted
20 by the court in the other state and the court finds that:

21 (1) the incapacitated person is physically
22 present in or is reasonably expected to move permanently to the
23 other state;

24 (2) an objection to the transfer has not been
25 made or, if an objection has been made, the objector has not

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1 established that the transfer would be contrary to the
2 interests of the incapacitated person; and

3 (3) plans for care and services for the
4 incapacitated person in the other state are reasonable and
5 sufficient.

6 E. The court shall issue a provisional order granting
7 a petition to transfer a conservatorship and shall direct the
8 conservator to petition for conservatorship in the other state
9 if the court is satisfied that the conservatorship will be
10 accepted by the court of the other state and the court finds
11 that:

12 (1) the protected person is physically present
13 in or is reasonably expected to move permanently to the other
14 state, or the protected person has a significant connection to
15 the other state considering the factors set forth in Subsection
16 B of Section 45-5-512 NMSA 1978;

17 (2) an objection to the transfer has not been
18 made or, if an objection has been made, the objector has not
19 established that the transfer would be contrary to the
20 interests of the protected person; and

21 (3) adequate arrangements will be made for
22 management of the protected person's property.

23 F. The court shall issue a final order confirming the
24 transfer and terminating the guardianship or conservatorship
25 upon its receipt of:

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1 (1) a provisional order accepting the proceeding
2 from the court to which the proceeding is to be transferred
3 that is issued pursuant to provisions similar to those set
4 forth in Section 45-5-522 NMSA 1978; and

5 (2) the documents required to terminate a
6 guardianship or conservatorship in New Mexico."

7 Section 56. A new Section 45-5-522 NMSA 1978 is enacted
8 to read:

9 "45-5-522. [NEW MATERIAL] ACCEPTING GUARDIANSHIP OR
10 CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.--

11 A. To confirm transfer of a guardianship or
12 conservatorship transferred to New Mexico pursuant to
13 provisions similar to Section 45-5-521 NMSA 1978, the guardian
14 or conservator shall petition the New Mexico court to accept
15 the guardianship or conservatorship. The petition shall
16 include a certified copy of the other state's provisional order
17 of transfer.

18 B. Notice of a petition pursuant to Subsection A of
19 this section shall be given to those persons that would be
20 entitled to notice if the petition were a petition for the
21 appointment of a guardian or issuance of a protective order in
22 both the transferring state and New Mexico. The notice shall
23 be given in the same manner as notice is required to be given
24 in New Mexico.

25 C. On the court's own motion, or on request of the

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1 guardian or conservator, the incapacitated or protected person
2 or other person required to be notified of the proceeding, the
3 court shall hold a hearing on a petition filed pursuant to
4 Subsection A of this section.

5 D. The court shall issue an order provisionally
6 granting a petition filed pursuant to Subsection A of this
7 section unless:

8 (1) an objection is made and the objector
9 establishes that transfer of the proceeding would be contrary
10 to the interests of the incapacitated or protected person; or

11 (2) the guardian or conservator is ineligible
12 for appointment in New Mexico.

13 E. The court shall issue a final order accepting the
14 proceeding and appointing the guardian or conservator as
15 guardian or conservator in New Mexico upon its receipt from the
16 court from which the proceeding is being transferred of a final
17 order issued pursuant to provisions similar to Section
18 45-5-521 NMSA 1978 transferring the proceeding to New Mexico.

19 F. Not later than ninety days after issuance of a
20 final order accepting transfer of a guardianship or
21 conservatorship, the court shall determine whether the
22 guardianship or conservatorship needs to be modified to conform
23 to the laws of New Mexico.

24 G. In granting a petition pursuant to this section,
25 the court shall recognize a guardianship or conservatorship

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1 order from the other state, including the determination of the
2 incapacitated or protected person's incapacity and the
3 appointment of the guardian or conservator.

4 H. The denial by a New Mexico court of a petition to
5 accept a guardianship or conservatorship transferred from
6 another state does not affect the ability of the guardian or
7 conservator to seek appointment as guardian or conservator in
8 New Mexico pursuant to Sections 45-5-301 and 45-5-401 NMSA 1978
9 if the court has jurisdiction to make an appointment other than
10 by reason of the provisional order of transfer."

11 Section 57. A new Section 45-5-523 NMSA 1978 is enacted
12 to read:

13 "45-5-523. [NEW MATERIAL] REGISTRATION OF GUARDIANSHIP
14 ORDERS.--If a guardian has been appointed in another state and
15 a petition for the appointment of a guardian is not pending in
16 New Mexico, the guardian appointed in the other state, after
17 giving notice to the appointing court of an intent to register,
18 may register the guardianship order in New Mexico by filing as
19 a foreign judgment in a court, in any appropriate county of New
20 Mexico, certified copies of the order and letters of office."

21 Section 58. A new Section 45-5-524 NMSA 1978 is enacted
22 to read:

23 "45-5-524. [NEW MATERIAL] REGISTRATION OF PROTECTIVE
24 ORDERS.--If a conservator has been appointed in another state
25 and a petition for a protective order is not pending in New

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1 Mexico, the conservator appointed in the other state, after
2 giving notice to the appointing court of an intent to register,
3 may register the protective order in New Mexico by filing as a
4 foreign judgment in a New Mexico court, in any county in which
5 property belonging to the protected person is located,
6 certified copies of the order and letters of office and of any
7 bond."

8 Section 59. A new Section 45-5-525 NMSA 1978 is enacted
9 to read:

10 "45-5-525. [NEW MATERIAL] EFFECT OF REGISTRATION.--

11 A. Upon registration of a guardianship or protective
12 order from another state, the guardian or conservator may
13 exercise in New Mexico all powers authorized in the order of
14 appointment except as prohibited pursuant to the laws of New
15 Mexico, including maintaining actions and proceedings in New
16 Mexico and, if the guardian or conservator is not a resident of
17 New Mexico, subject to any conditions imposed upon nonresident
18 parties.

19 B. A New Mexico court may grant any relief available
20 pursuant to the Uniform Adult Guardianship and Protective
21 Proceedings Jurisdiction Act and other law of New Mexico to
22 enforce a registered order."

23 Section 60. A new Section 45-5-527 NMSA 1978 is enacted
24 to read:

25 "45-5-527. [NEW MATERIAL] RELATION TO ELECTRONIC

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1 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
2 Adult Guardianship and Protective Proceedings Jurisdiction Act
3 modifies, limits and supersedes the federal Electronic
4 Signatures in Global and National Commerce Act, 15 U.S.C.
5 Section 7001, et seq., but does not modify, limit or supersede
6 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
7 authorize electronic delivery of any of the notices described
8 in Section 103(b) of that act, 15 U.S.C. Section 7003(b)."

9 Section 61. A new Section 45-5-528 NMSA 1978 is enacted
10 to read:

11 "45-5-528. [NEW MATERIAL] TRANSITIONAL PROVISION.--

12 A. Subparts 1, 3 and 4 of the Uniform Adult
13 Guardianship and Protective Proceedings Jurisdiction Act and
14 Sections 45-5-526 and 45-5-527 NMSA 1978 apply to proceedings
15 begun before July 1, 2009, regardless of whether a guardianship
16 or protective order has been issued and to proceedings begun on
17 or after that date.

18 B. The remainder of the Uniform Adult Guardianship
19 and Protective Proceedings Jurisdiction Act applies to
20 guardianship and protective proceedings begun on or after July
21 1, 2009."

22 Section 62. Section 45-6-205 NMSA 1978 (being Laws 1992,
23 Chapter 66, Section 22) is amended to read:

24 "45-6-205. DESIGNATION OF AGENT.--

25 A. By a writing signed by all parties, the parties

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1 may designate as agent of all parties on an account a person
2 other than a party.

3 B. Unless the terms of an agency designation provide
4 that the authority of the agent terminates on disability or
5 incapacity of a party, the agent's authority survives
6 disability and incapacity. The agent may act for a disabled or
7 incapacitated party until the authority of the agent is
8 terminated.

9 C. Death of the sole party or last surviving party
10 terminates the authority of an agent."

11 Section 63. Section 45-6-216 NMSA 1978 (being Laws 1992,
12 Chapter 66, Section 29, as amended) is amended to read:

13 "45-6-216. COMMUNITY PROPERTY.--

14 A. A deposit of community property in an account does
15 not alter the community character of the property or community
16 rights in the property, if any, but a right of survivorship
17 between parties married to each other arising from the express
18 terms of the account or Section 45-6-212 NMSA 1978 may not be
19 altered by will or other governing instrument.

20 B. This section does not affect or limit the right of
21 a financial institution to make payments pursuant to Sections
22 45-6-211 through 45-6-227 NMSA 1978 and the deposit agreement."

23 Section 64. Section 46A-1-107 NMSA 1978 (being Laws 2003,
24 Chapter 122, Section 1-107, as amended) is amended to read:

25 "46A-1-107. GOVERNING LAW.--The meaning and effect of the

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1 terms of a trust are determined by:

2 ~~[A. the law of the state designated in the terms;~~

3 ~~B.]~~ A. the law of the jurisdiction designated in the
4 terms ~~[which jurisdiction is not a state]~~ unless the
5 designation of that jurisdiction's law is contrary to a strong
6 public policy of ~~[this state or]~~ the ~~[state]~~ jurisdiction
7 having the most significant relationship to the matter at
8 issue; or

9 ~~[C.]~~ B. in the absence of a controlling designation
10 in the terms of the trust, the law of the jurisdiction having
11 the most significant relationship to the matter at issue."

12 Section 65. Section 46A-11-1104 NMSA 1978 (being Laws
13 2003, Chapter 122, Section 11-1104) is amended to read:

14 "46A-11-1104. APPLICATION TO EXISTING RELATIONSHIPS.--

15 A. Except as otherwise provided in the Uniform Trust
16 Code, on the effective date of the Uniform Trust Code or of any
17 amendment to that code:

18 (1) the Uniform Trust Code or the amendment
19 applies to all trusts created before, on or after its effective
20 date;

21 (2) the Uniform Trust Code or the amendment
22 applies to all judicial proceedings concerning trusts commenced
23 on or after its effective date;

24 (3) the Uniform Trust Code or the amendment
25 applies to judicial proceedings concerning trusts commenced

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1 before its effective date, unless the court finds that
2 application of a particular provision of the Uniform Trust Code
3 or the amendment would substantially interfere with the
4 effective conduct of the judicial proceedings or prejudice the
5 rights of the parties, in which case the particular provision
6 of the Uniform Trust Code or the amendment does not apply and
7 the superseded law applies;

8 (4) any rule of construction or presumption
9 provided in the Uniform Trust Code or the amendment applies to
10 trust instruments executed before the effective date of the
11 Uniform Trust Code or the amendment unless there is a clear
12 indication of a contrary intent in the terms of the trust; and

13 (5) an act done before the effective date of the
14 Uniform Trust Code or the amendment is not affected by the
15 Uniform Trust Code or the amendment.

16 B. If a right is acquired, extinguished or barred
17 upon the expiration of a prescribed period that has commenced
18 to run under any other statute before the effective date of the
19 Uniform Trust Code or the amendment, that statute continues to
20 apply to the right even if it has been repealed or superseded.

21 C. The Uniform Trust Code or the amendment does not
22 apply to the trust created by the Enabling Act for New Mexico
23 of June 20, 1910, 36 Stat. 557, Ch. 310."

24 Section 66. REPEAL.--Sections 45-5-301.2, 45-5-432,
25 45-9A-12, 45-9A-13 and 46-10-17 NMSA 1978 (being Laws 1993,
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1 Chapter 301, Section 24, Laws 1975, Chapter 257, Section 5-432,
2 Laws 2005, Chapter 143, Sections 16 and 17 and Laws 2001,
3 Chapter 290, Section 17) are repealed.

4 Section 67. TEMPORARY PROVISION--RECOMPILATION.--

5 A. Sections 45-2-805 and 45-2-806 NMSA 1978 (being
6 Laws 1975, Chapter 257, Section 2-804 and Laws 1973, Chapter
7 276, Section 8, as amended) are recompiled as Sections 45-2-807
8 and 45-2-808 NMSA 1978.

9 B. Sections 45-9A-1 through 45-9A-11 NMSA 1978 (being
10 Laws 2005, Chapter 143, Sections 5 through 15) are recompiled
11 as Sections 45-3-920 through 45-3-931 NMSA 1978 and shall be
12 compiled as part 9A, the Uniform Estate Tax Apportionment Act,
13 of Article 3, Probate of Wills and Administration, of the
14 Uniform Probate Code.

15 Section 68. TEMPORARY PROVISION--COMPILATION
16 INSTRUCTIONS.--

17 A. Sections 40 through 61 of this act shall be
18 compiled as Part 5A, the Uniform Adult Guardianship and
19 Protective Proceedings Jurisdiction Act, of Article 5,
20 Protection of Persons Under Disability and Their Property, of
21 the Uniform Probate Code.

22 B. Sections 40 through 45 of this act shall be
23 compiled as Subpart 1, General Provisions, of Part 5A, the
24 Uniform Adult Guardianship and Protective Proceedings
25 Jurisdiction Act, of Article 5, Protection of Persons Under

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1 Disability and Their Property, of the Uniform Probate Code.

2 C. Sections 46 through 54 of this act shall be
3 compiled as Subpart 2, Jurisdiction, of Part 5A, the Uniform
4 Adult Guardianship and Protective Proceedings Jurisdiction Act,
5 of Article 5, Protection of Persons Under Disability and Their
6 Property, of the Uniform Probate Code.

7 D. Sections 55 and 56 of this act shall be compiled
8 as Subpart 3, Transfer of Guardianship or Conservatorship, of
9 Part 5A, the Uniform Adult Guardianship and Protective
10 Proceedings Jurisdiction Act, of Article 5, Protection of
11 Persons Under Disability and Their Property, of the Uniform
12 Probate Code.

13 E. Sections 57 through 59 of this act shall be
14 compiled as Subpart 4, Registration and Recognition of Orders
15 from Other States, of Part 5A, the Uniform Adult Guardianship
16 and Protective Proceedings Jurisdiction Act, of Article 5,
17 Protection of Persons Under Disability and Their Property, of
18 the Uniform Probate Code.

19 F. Sections 60 and 61 of this act shall be compiled
20 as Subpart 5, Miscellaneous Provisions, of Part 5A, the Uniform
21 Adult Guardianship and Protective Proceedings Jurisdiction Act,
22 of Article 5, Protection of Persons Under Disability and Their
23 Property, of the Uniform Probate Code.

24 Section 69. TEMPORARY PROVISION--RECOMPILATION.--Sections
25 46-10-3 through 46-10-5 NMSA 1978 (being Laws 2001, Chapter
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1 290, Sections 3 through 5) are recompiled as Sections 45-2-1103
2 through 45-2-1105 NMSA 1978. Sections 46-10-7 through 46-10-16
3 NMSA 1978 (being Laws 2001, Chapter 290, Sections 7 through 16)
4 are recompiled as Sections 45-2-1107 through 45-2-1116 NMSA
5 1978.

6 Section 70. APPLICABILITY.--The provisions of Section 22
7 of this act apply to a trust described in Subsection (d) of
8 Section 46-3A-409 NMSA 1978 on and after the following dates:

9 A. if the trust is not funded as of July 1, 2009, the
10 date of the decedent's death;

11 B. if the trust is initially funded in the calendar
12 year beginning January 1, 2009, the date of the decedent's
13 death; or

14 C. if the trust is not described in Subsection A or B
15 of this section, January 1, 2009.

16 Section 71. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2009.

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